

Parliament of the Commonwealth of Australia

RIDING THE WAVES OF CHANGE

**A REPORT
OF THE
SENATE SELECT COMMITTEE ON THE
SOCIO-ECONOMIC CONSEQUENCES OF THE
NATIONAL COMPETITION POLICY**

FEBRUARY 2000

Commonwealth of Australia

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PREFACE

The Committee's Terms of Reference were complex and wide-ranging, and in recent times, 'competition policy' has become an emotionally charged subject.

Nevertheless, the Committee is grateful to the many individuals and organisations who took the time to write to the Committee to express their views or who appeared at the public hearings conducted in the various states.

TERMS OF REFERENCE

To inquire into and report on the National Competition Policy, including:

(a) its socio-economic consequences, including benefits and costs, on:

- (i) unemployment,
- (ii) changed working conditions,
- (iii) social welfare,
- (iv) equity,
- (v) social dislocation, and
- (vi) environmental impacts;

(b) the impact on urban and rural and regional communities;

(c) its relationship with other micro-economic reform policies; and

(d) clarification of the definition of public interest and its role in the National Competition process.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

The overwhelming response to the National Competition Policy is paradoxical - on the one hand, many, but not all, accept the theory that NCP is being beneficial to the community overall, but reject individual changes where the initial costs in terms of employment or social infrastructure are severe. At the individual level, the costs are often immediate and easily identified, while the benefits are long term, less easily defined, and do not always go to the party bearing the costs.

The community is clearly expressing concern at the social consequences of the changes that are resulting from NCP, general micro-economic reform and globalisation. There is a concern that policies labelled as "economic rationalisation policies" are eroding the social cohesion of some communities and devaluing social objectives at the expense of economic objectives such as productivity and efficiency. The nexus extolled by economists between the achievement of economic objectives and the flow-on to the achievement of social benefits is not always evident to the community at large. This scepticism of the nexus arises particularly in the many small communities being disproportionately affected by the impact of economic reform policies, social changes, globalisation and technology.

The pace of change in the economic environment is pressing the community's capacity to adjust and assimilate.

The Senate Committee has found that there are several major concerns:

- the inconsistent application and interpretation of the public interest test with its domination by economic assessment ahead of the harder-to-measure intangible attributes in the social and environmental areas;
- the lack of understanding of the policy overall, which indicates the need for a strong education program, particularly at local government and community levels;
- the way legislation reviews are being undertaken within individual jurisdictions and the lack of a national approach;
- the lack of oversight by CoAG of the NCC and the NCP agenda;
- the impact on employment and the lack of structural adjustment and transitional arrangements; and
- the interface of short term economic development policies and proposals with longer term ecologically sustainable development and environmental issues. The evidence presented to the Committee on water resource policies clearly marks

this issue as an emerging one to which Governments will have to give due attention to resolve potential conflict within the community.¹

The further deliberations by the Committee over subsequent evidence received in hearings and from additional submissions, have confirmed the views which the Committee identified in its Interim Report.²

However, the Committee is in agreement with the view of State/Territory Governments that the policy has not been in operation long enough for the full effect and impact to become apparent. As legislation reviews are completed and changes are made, the impact of the policy will become more evident. The Productivity Commission has attempted to separate out the relative effects of NCP from other micro-economic reform policies in its recent report "Impact of Competition Policy Reforms on Rural and Regional Australia". The Commission commented upon the difficulty of this task and the lack of data.

Public Interest Test

The Committee has found that there is general confusion and misunderstanding over what constitutes the 'public interest'. When combined with the administrative ease of simply seeking to measure outcomes in terms of price changes, there is a risk that the policy will be applied in a narrow, restrictive, 'public interest' test rather than one which takes account of the wider social impacts. The Committee has recommended:

For the purposes of measuring outcomes of the policy, a method of assessment be agreed by CoAG which will provide a numerical weighting that can be attributed to environmental, social, and employment factors, wherever possible. (Chapter 4, Recommendation 1)

That the NCC publish a detailed explanation of the public interest test and how it can be applied and produces a listing of case histories where the public interest test has been applied as a regularly updated service of decisions. This may form part of the information available through the proposed 'one-stop-shop' advisory service. (Chapter 4, Recommendation 2)

That CoAG agree on a standardised public interest test procedure to be used in cases where a review has implications across state or territory borders. (Chapter 4, Recommendation 3)

That a 'hotline' service be set up for organisations seeking information and assistance on how to use the public interest test and review processes. This

1 See Committee Hansards, Perth, 17 May 1999, Melbourne, 1 November 1999 and Perth, 19 November 1999.

2 See Committee Hansards, Sydney, 9 September 1999; Melbourne, 1 November 1999; and Perth, 19 November 1999.

service should be reviewed after twelve months operation. (Chapter 4, Recommendation 5)

Public Education

The lack of public understanding of the policy has been a fundamental problem since the policy's inception. Concerns have been expressed that the public has been required to accept the policy and its consequent changes, on faith. In the Committee's view, there has been a degree of 'blind' or dogmatic application of NCP by officials. The lack of a multi-disciplinary approach to legislative reviews has exacerbated the situation, as has a perceived lack of transparency of many of these reviews. The Committee recommends:

That the NCC and state and territory agencies with responsibility for implementing NCP, undertake expanded public education programs about the policy and how it is to be implemented. (Chapter 4, Recommendation 4)

That the Federal Government in consultation with local government and industry and community bodies and NCC, create a 'one-stop-shop' advisory service to provide local government, industry bodies, individuals, companies, and community groups with advice which will enable them to tackle competition policy issues. (Chapter 5, Recommendation 19)

That this service should also be a mechanism by which concerns or complaints can be channelled to the appropriate authority for resolution. (Chapter 5, Recommendation 20)

Community-based welfare

The application of NCP to this sector was not fully foreseen by the architects of the policy. Evidence provided to the Committee suggests that in some cases, the application of NCP principles in the health, community and aged-care industries would appear to be in conflict with other service provision goals. This is apparent in the competitive tendering and contracting-out processes in community and social welfare service delivery. The Committee recommends:

That, where appropriate, the Commonwealth Departments of Health and Aged Care and Community Services, examine competitive tendering programs and determine which services are properly and efficiently competitively tendered and which may be contracted out on a benchmark of service basis. Particular attention should be paid to rural and remote communities where locally provided co-operative services may be integral to the success of service delivery. (Chapter 5, Recommendation 16)

Review Process

The Committee has received evidence that the legislative reviews undertaken by State Governments are not always being undertaken in an open, transparent manner with the views of all interested parties taken into consideration. The Committee recommends:

That the NCC no longer be required to carry out legislative reviews; and that Governments, through CoAG, undertake to agree broad systems and processes for reviews, including mechanisms for proper consideration of the submissions and views of any interested parties, in the formulation of the initial recommendations. (Chapter 4, Recommendation 10)

That all reviews be undertaken in a fully transparent way with opportunity for contribution from the public at all stages. (Chapter 4, Recommendation 6)

That review panels be required to actively seek out contributions from all interested groups and represent the range of views in the report to government. (Chapter 4, Recommendation 7)

That all reports of reviews be made public at least thirty days before the government is to consider the review. (Chapter 4, Recommendation 8)

That CSO commitments be publicly acknowledged, monitored, and regularly reported on. (Chapter 4, Recommendation 9)

That other governments be provided the opportunity for input to each other's reviews as a way to contribute to impartial outcomes based on a national rather than state or regional perspective. (Chapter 4, Recommendation 11)

That reviews and public interest tests must include Employment and Community Impact Statements. (Chapter 5, Recommendation 12)

That, where a case can be made for assistance in meeting the costs of reviews that community and industry groups are required to meet due to their involvement in prolonged or complicated industry reviews, such organisations should be able to apply to State and Federal NCP Units for financial assistance paid from the tranche funds on a discretionary basis (as determined by the State/Federal NCP Units). (Chapter 6, Recommendation 28)

That all reviews of legislation and changes to competitive arrangements in the social welfare sector adhere to the broad principles of the public interest and take account of the difficult-to-measure social factors rather than relying solely on narrow, more easily measurable, economic factors. That all contracting out arrangements and competitive tendering processes and documentation in the social welfare sector be public and transparent. There should be a presumption that all documents will be public and any claims of commercial confidentiality should be kept to a minimum and where essential. (Chapter 5, Recommendation 14)

That Governments critically examine competitive tendering processes for social welfare services with a view to ensuring that a sophisticated and flexible approach is taken to the provision of service. The process should consider as part of the public interest test: quality, consistency and continuity of service; the value of local co-operative arrangements and the personal nature of such service. (Chapter 5, Recommendation 15)

CoAG Oversight

The Committee is concerned at evidence³ received which indicates that the present uncoordinated arrangements may result in a less than optimal outcome for Australia and Australians. The NCC has prosecuted its 1996 agenda largely without multi-government supervision and while the reform agenda has both moved on and exposed some significant adjustment issues that Governments need to address by reviewing and altering the NCC's work program, no such review or adjustment has occurred. The Committee also endorses the Productivity Commission's recommendation that the NCC no longer carry out legislative reviews to ensure that there is no conflict of interest. The Committee recommends:

That as a matter of urgency, CoAG should determine and implement the post 2000 agenda for NCP. (Chapter 6, Recommendation 26)

That there be a review of NCP by CoAG to ensure that its economic and social objectives are being met, and that the policy be subject to ongoing monitoring by CoAG. (Chapter 6, Recommendation 34)

That the issue of the distribution of tranche funds should be a matter addressed by CoAG in the review of NCP. (Chapter 5, Recommendation 17)

Infrastructure

The Committee received evidence on a variety of infrastructure-related issues. Witnesses were concerned that there is not neutrality in the treatment of intermodal competition, particularly road and rail, and that this causes disproportionate expenditure of public funds and increased indirect costs. The need for the continued development of infrastructure in rural and regional areas is seen as necessary for them to remain both competitive and an integrated part of the rest of Australia. Other witnesses raised concerns over access to established infrastructure, both public and private. Another issue raised with the Committee was the regulatory practices for utilities, particularly following privatisation. The Committee considers that the issues related to infrastructure are central to the future equitable development of the Australian economy and society and as such warrant specific attention by CoAG. The Committee recommends:

3 See Committee Hansards, 8 April 1999, Brisbane; 17 May 1999, Perth; 9 September 1999, Sydney; 1 November 1999, Melbourne.

That the Commonwealth Treasurer have the power to impose a time limit or direct the NCC to complete an access evaluation recommendation within a certain time frame. The Committee believes that to be any more prescriptive would have the potential to hasten what may be a very complicated and delicate investigation. (Chapter 6, Recommendation 29)

That a public consultation process be mandatory in relation to applications for access to major public infrastructure facilities. (Chapter 6, Recommendation 30)

Given the significance of road and rail infrastructure, that transport reform be a matter for priority consideration by CoAG. (Chapter 6, Recommendation 31)

That the NCC address the issue of road-rail competition for freight as a matter of urgency. (Chapter 6, Recommendation 32)

That issues relating to the regulation of infrastructure services are of serious concern and should be a matter for priority discussion by CoAG. (Chapter 6, Recommendation 33)

Employment and transitional arrangements

The Committee heard evidence⁴ that whilst the reforms in areas such as gas and electricity have delivered some benefits, the overall benefits have not been as large as was anticipated. The costs in terms of fewer employment opportunities have been considerable and the social and welfare consequences have not been adequately addressed. The Committee found a clear need for a proper quantification of the benefits and costs of the policy - social, environmental and economic. The lack of data for benchmarks or performance criteria for evaluation of the policy is one of the greatest shortcomings of the implementation of the NCP. The lack of hard evidence as to the benefits of the policy may be to blame for the suspicion about the policy. The Committee recommends:

That the issue of the lack of data and information on the impacts of NCP be addressed in two ways:

- *governments should ensure information is gathered about structural adjustment needs in various sectors. Governments could commission specific studies or obtain this information from the NCC's tranche payment assessment process from the states/territories and on advice from the states/territories. Local government should be encouraged to feed into this*

⁴ See Committee Hansards, Perth, 17 May 1999; Sydney, 9 September 1999; Melbourne, 1 November 1999; and Perth, 19 November 1999.

process with its own statistical information. Governments should commission studies where appropriate; and

- *where necessary, the Productivity Commission, under reference from the Commonwealth Treasurer should be directed to undertake specific studies where major impacts are envisaged and transitional arrangements/structural adjustment may be desirable: eg, a major agricultural industry. (Chapter 6, Recommendation 27)*

That reviews of legislation to consider and report on transitional arrangements, including compensation or retraining. The costs of such and how these arrangements will be implemented should also be outlined. (Chapter 5, Recommendation 13)

That all reviews of regulations recommend action in regard to transitional arrangements, development programs, and compensation when proposing change which will negatively impact on communities. (Chapter 5, Recommendation 18)

Environment

The Committee considers that this is a very important emerging issue in relation to NCP and its ongoing implementation. As the water industry gears up to the proposed changes, gas and electricity utilities are 'unbundled', corporatised and privatised, the energy supply and water services industries and government regulators face new challenges in balancing profit and efficiency goals with social and environmental ones. Superimposed upon this scenario are the goals of the agricultural and mining sectors so important to the economic fabric of the country. The Committee recommends:

That in reviewing legislation and arrangements which involve environmental impacts, Governments should ensure that a broad interpretation of the public interest test is undertaken, including an “account” of environmental effects of changes to regulations or failures to change. (Chapter 5, Recommendation 21)

That greater rigour be applied to ensuring that the processes of reviewing legislation and assessing the public interest in areas involving impacts on the environment are as open and transparent as possible. (Chapter 5, Recommendation 22)

That the NCC work with Commonwealth and State environmental agencies to ensure that reviews of related legislation are co-ordinated. The aim of this is to eliminate anomalies in legislation and regulation that may lead to environmental degradation. (Chapter 5, Recommendation 23)

That the government commission a review of subsidies and other incentives to use publicly owned natural resources which are inhibiting private investment

in competing products, to the detriment of the environment. (Chapter 5, Recommendation 24)

That jurisdictions ensure, that in implementing the public benefit test, environmental 'externalities', including greenhouse gas emissions, are appropriately considered. (Chapter 5, Recommendation 25)

Conclusion

The Committee has concluded that the community is demanding greater government attention to the finer application of the policy and its impact on the social fabric of communities.

The community wants greater attention given to the intangible costs of policy changes, and the methods by which such costs can be alleviated such as transitional arrangements, employment programs, and community service obligations.

CHAPTER ONE

INTRODUCTION

Establishment of the Committee

1.1 On 1 July 1998, the Senate established the Select Committee on the Socio-Economic Consequences of the National Competition Policy. However, the Committee's inquiry was cut short when the 1998 federal election was called and the Committee lapsed at the end of the 38th Parliament.

1.2 On 9 March 1999, the Senate agreed to re-establish the Committee, with similar Terms of Reference.

Committee's Objectives

1.3 The Committee was aware when the inquiry began, that not only had the Productivity Commission been directed to commence an inquiry into the impacts of National Competition Policy but that a number of Committees had already undertaken studies about the policy and its effects on different aspects of industry and the community.

1.4 The Committee saw its primary role as listening through oral evidence and submissions to the many concerns expressed about National Competition Policy. The inquiry therefore seeks to draw together the plethora of information on NCP and the many inquiry reports and contribute to the ongoing review of NCP.

Submissions

1.5 The Committee advertised for submissions based on its original terms of reference in July 1998 and re-advertised in March 1999 following its re-establishment. The Committee wrote to a wide range of interested organisations advising them of the Committee's inquiry and invited them to make submissions. The Secretariat has also undertaken an extensive literature survey in order to identify the potential issues.

1.6 Over 200 submissions have been received from a broad cross section of groups, including individuals concerned about water prices, to peak agricultural bodies concerned about the lack of transparency and coordination of the review process in each state/territory, small local and national companies, state governments and their agencies, federal government agencies including the National Competition Council and Australian Competition and Consumers Commission (ACCC), local governments and professional bodies.

1.7 A list of Submissions is included at **Appendix 1**.

Hearings

1.8 The Committee has conducted hearings in Canberra, Brisbane, Perth, Albany, Melbourne, Adelaide, Sydney and Kalgoorlie. The Committee also conducted a Round Table Forum in Melbourne on 1 November 1999. A list of witnesses at the hearings is at **Appendix 2**.

Interim Report

1.9 On 26 August 1999 the Committee tabled an interim report entitled *Competition Policy: Friend or Foe – Economic Surplus, Social Deficit?*. That Report canvassed the evidence which the Committee had received through the submissions and public hearings it had held up until 31 July 1999. The Committee did not seek to make any recommendations in its interim report but canvassed the evidence received to that date, outlined some general conclusions, and identified some areas where the Committee hoped to gather further evidence.

1.10 The interim report was widely distributed to stimulate further consideration and discussion of the impact of NCP on urban, regional and rural Australia. Copies were sent to all of the parties who had made submissions to the Committee, had appeared before the Committee or whose input the Committee was seeking. The report was made available through the Internet and a summary was sent to each of Australia's 706 local government authorities.

1.11 This Report builds on the evidence the Committee has received since completing that report.

Other Inquiries

1.12 While the Committee's inquiry has been under way several other inquiries into aspects of competition policy and related micro-economic reform have reported. Principle among these are the Productivity Commission Inquiry into the Impact of Competition Policy Reforms on Rural and Regional Australia, and the Senate Standing Committee on Rural and Regional Affairs Inquiry into the Australian Dairy Industry. The Joint Select Committee into the Retail Sector heard evidence in relation to National Competition Policy, and the Committee took account of competition issues in arriving at their decisions and recommendations. Others include the Senate Finance and Public Administration References Committee's report on Contracting Out of Government Services.¹

1.13 The Committee has examined the reports from each of these inquiries and, where relevant, taken their findings into account in considering its own conclusions

1 These reports are available from the Senate Committee Office or online on the Internet.

and recommendations. The conclusions and recommendations from some of these other inquiries are summarised in Chapter 3 of this report.

Acknowledgment of the role of former Senator Dee Margetts

1.14 Former Senator Dee Margetts (the Greens, WA), whose term as a Senator expired on 30 June 1999, had a significant role in the establishment of this inquiry and jointly moved with Senator Peter Cook (ALP, WA), the original motion in the Senate that led to the Committee's establishment. The Committee wishes to place on record its appreciation of the considerable contribution Senator Margetts made to the inquiry as a member of the Committee from its inception until the expiry of her term.

CHAPTER 2: INTERIM REPORT

Competition Policy: Friend or Foe

Economic Surplus, Social Deficit?

2.1 In August 1999, the Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy agreed to issue an Interim Report as a basis for discussion and further deliberation in the community.

2.2 The Committee found that the community had serious concerns about the National Competition Policy (NCP).

2.3 Furthermore, the Committee found that the NCP had become a 'lightning rod' for the many negative social and structural changes that are occurring in Australia, particularly in rural and regional areas. Consistent with this, the Committee found considerable misunderstanding of NCP. NCP is being blamed for outcomes caused by other policies and changes occurring in the marketplace.

2.4 In the Interim Report, the Committee expressed concern about the application of NCP as a 'one model' approach to all sectors and that a flexible outcome ought to be sought by an application of the 'public interest' test that allows for changing concepts of what is in the 'public interest'. The Committee found that there is a need for a more directed and considered public education and consultation effort in relation to NCP in order to address the misinformation and misconceptions about the purpose and goals of the policy.

2.5 In the final chapter of the Interim Report the Committee highlighted those areas where further inquiry was needed. The Committee was concerned that, notwithstanding the high quality of the submissions and evidence presented to it, it had not received as much information as desirable on a number of issues.

2.6 The issues identified by the Committee included:

- unemployment and working conditions;
- health and social welfare, including access and equity trade-offs and community service obligations;
- the environment and water reform;
- the impact on urban and rural and regional communities, particularly isolated Aboriginal Communities; and
- the role of the public interest test in the National Competition Policy process.

2.7 The Committee also indicated that its work to date had identified a number of areas of significant concern that warranted closer attention and public input before finalising its report. These areas included:

- the administration of NCP, its overall management, application and co-ordination;
- education for practitioners of NCP regarding their application, administration and consultative processes;
- ongoing empirical study of the impact of NCP on the social and economic welfare of all Australians to assess progress and outcomes;
- the appropriate balancing of policy delivery mechanisms affecting small rural and regional areas as NCP is not a universally applicable model as it is presently applied;
- the regulatory framework of NCP, including the Trade Practices Act; and
- the forward agenda for NCP, including the impact of its widening application and consideration of its structure and application post 2006.

Responses to the Interim Report

2.8 A number of responses were received following the wide distribution of the Interim Report. The majority were in accord with the general thrust of the report:

The report was considered by Council with a great deal of interest....Local government expressed bitter disappointment at not being invited to be represented at the CoAG table when the decision was taken in 1996 to proceed with National Competition Policy (NCP).

Hence, concerns expressed by local government at the adverse effect of NCP undertakings with a community service obligation appear to have fallen on deaf ears. Even further, it now appears that the National Competition Council (responsible for implementing the NCP) is progressing merrily on its own way without oversight by the higher tiers of Government.

Following consideration of these points, Council resolved to endorse the recommendation on the part of the Senate Select Committee in that as part of the Year 2000 review of the National Competition Council, consideration must [be] given to the role the National Competition Council can play in securing a coordinated outcome.¹

1 Submission No 215, Nambucca Shire Council, p 1.

And

The City of Bunbury has had a long interest in NCP, and its socio-economic impact upon our community.

I support the broad thrust of the Interim Report.²

2.9 Nevertheless, there were a number of responses which disputed the Committee's findings:

Your assertions in the summary that community concerns are based on -

"level of understanding of the policy"

"lightning rod for the many negative social and structural changes"

"misrepresented and poorly applied"

suggest the Committee does not fully appreciate rural issues.

The facts are that the more effectively the policy is implemented in rural areas, the more devastating the effects. I have, on behalf of Council, made many submission to both State and Federal Governments over the impact of these economic policies:

Forestry, Electricity, RTA, Telstra, State Rail, to name a few

Implementing the requirements of National Competition Policy in these industries has consistently meant - less jobs in rural areas, lower and less reliable services, and increased charges for domestic consumers.....

The Senate Select Committee has an opportunity to lead the Government towards a change of directions and hopefully to a rediscovery of its social conscience.³

2.10 The Australian Conservation Foundation expressed its concern that the Interim Report did not accurately reflect its views that NCP, correctly applied, will help to reduce environmental pressures, particularly where new water resource developments are involved. The ACF also noted that:

...currently, access to public natural resources is significantly under-priced, hence raising serious issues of competitive neutrality. For example in forestry management, potential for investment in private hardwood plantation forestry is seriously compromised by the sale of hardwoods by

2 Submission No 214, City of Bunbury, p1.

3 Submission No 216, Copmanhurst Shire Council, p 1-2.

State forestry agencies at a loss, and without having to pay taxes, dividends and interest on debt.⁴

2.11 The Committee is grateful to the above organisations and others who responded to its call for further information. The Committee, having circulated its interim report widely and held further hearings, now presents its final report.

4 Submission No 206, Australian Conservation Foundation, p 1.

CHAPTER 3

THE FINDINGS OF OTHER REVIEWS

It would be ironic – and indeed unacceptable – if Australia was to achieve major competition reform only to find that Parliaments and Governments had indirectly diminished the customer focus of previous government enterprises which had seen this as their principal objective.....Underpinning the Hilmer reforms and our own work in this report is the fundamental tenet, which is that people must be the clear net beneficiaries. Unless the benefits clearly outweigh the disruption due to the changed process, and any loss of customer rights then the whole process will have been largely worthless.¹

Introduction

3.1 The broad, all encompassing and controversial nature of NCP has meant that a great number of inquiries have been conducted on various aspects of the policy and its implementation. The Committee has reviewed the findings of a number of other Committees and these are summarised below.

Senate Economics Legislation Committee

3.2 The National Competition Policy, the Competition Policy Reform Bill 1995 was referred to the Economics Legislation Committee by the Senate on 11 May 1995. The Committee received 26 submissions and held two public hearings. In its report, the Committee noted that there was considerable support for the Bill however a number of issues were raised:

General concern was expressed that competition policies were ‘being extended to a whole range of bodies and organisations which have never in the past been thought of as being subject to competitive legislation’. The legislation has the potential to be very far reaching and may have an impact far broader than originally intended. Concern was expressed about definitions within the Bill, and in particular about the definition of ‘business’ (which includes ‘not for profit’ businesses), and which government agencies would be subject to the scope of the Bill and which would not. The suggestion was put forward that unless the NCC very early on formulates policy in relation to definitions and to the proper role for government, there is a great chance that the courts will be defacto policy makers. In addition, because governments may find some of the outcomes

1 Standing Committee on Uniform Legislation and Intergovernmental Agreements, Competition Policy, Consideration of the Implementation of a National Competition Policy, Twelfth Report, Legislative Assembly Western Australia, (Hon P G Pandal, MLA Chair), 1996, p vii.

of competition policy uncomfortable, they will be forced to introduce a great many regulations to ensure that certain vulnerable sectors of the community are protected. This may place an undue burden on the business community.

The Institution of Engineers expressed concern about the impact of competition policy, and associated moves towards corporatisation, privatisation, outsourcing and breakup of government business enterprises, on the overall process of technological development in Australia and the education of future generations of professional people. In particular, the Institution highlighted the potential for loss of corporate memory through the breakup of major public utilities and the move of large numbers of individuals with extensive knowledge and experience into smaller private sector organisations. This breakup will also diminish the potential for public sector organisations to act as a training base for young professionals such as engineers, and will reduce the likelihood that government enterprises carry out long-term basic research relevant to their sector.....

The Australian Conservation Foundation (ACF) expressed the concern that where plans are made to corporatise or privatise public utilities they should be subject to comprehensive, independent and public review. The ACF further expressed the view that, with regard to water and energy utilities, it was inappropriate for private companies to be making management and policy decisions where such decisions have the potential to have impact on the natural environment.

The Communications Law Centre submitted that current discussion on competition policy reform concentrated too much on the supply side of the economic equation (that is, that efficiency and economic gains are the primary goals) and that insufficient attention was being paid to the demand side of the equation (issues such as access, equity, pricing, quality, standards and privacy).²

3.3 A number of the above concerns are now reflected some four years later in the current environment. The purview of the NCP has become increasingly broad and the perception is that attention has been focussed on efficiency and economic gains rather than access, equity, quality, standards etc. Concern is still being expressed about the lack of transparency of legislative reviews, lack of consultation, independence and comprehensiveness.

3.4 Concerns have also been raised with the Select Committee about the different definitions of public interest used by different jurisdictions administering NCP. There is a lack of uniformity, and there is a problem with inequity which arises between sectors where the policy has been applied more or less rigorously or more or less competently.

2 Report on the Consideration of the Competition Policy Reform Bill 1995, Economics Legislation Committee, Australian Senate, June 1995, p 3-4.

House of Representatives Standing Committee on Financial Institutions and Public Administration

3.5 The National Competition Policy Reform Act was passed in 1995 and during 1995 and 1996 further concerns were raised about the NCP and its implementation.

3.6 Following on from an earlier reference, the House of Representatives Standing Committee on Financial Institutions and Public Administration conducted an inquiry into the National Competition Policy in 1996. The Committee reported in June 1997 on the following terms of reference:

1. The Committee is to consider appropriate means, including review processes, for applying the 'public interest' tests included in the Competition Principles Agreement. These tests are a critical feature of this Agreement. They are described in Principles 1(3), which provides that:

Without limiting the matters that may be taken into account, where this Agreement calls:

- (a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
- (b) for the merits or appropriateness of a particular policy or course of action to be determined; or
- (c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

- (d) government legislation and policies relating to ecologically sustainable development;
- (e) social welfare and equity considerations, including community service obligations;
- (f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- (g) economic and regional development, including employment and investment growth;
- (h) the interests of consumers generally or of a class of consumers;
- (i) the competitiveness of Australian businesses; and
- (j) the efficient allocation of resources.

2. The Committee will have particular regard to the impact of competition policy reform on the efficient delivery of community service obligations including and assessment of:

(a) existing government policies relating to community service obligations; and

(b) options for the delivery and funding of these services.

3. The Committee will also examine the implications of competition policy reform for the efficient delivery of services by local government, including arrangements that have been developed between State Governments and local government authorities for the implementation of the Competition Principles Agreement.³

3.7 Similarly to the Economics Legislation Committee, the House of Representatives Committee also found that although, there was some dissension about the policy, generally the view was that the progress of the policy was widely supported. However, of particular relevance to this Select Committee Inquiry, the House of Representative's Committee made a number of recommendations relating to what they felt were necessary components of the 'public interest' process. The House of Representatives Committee also made a number of recommendations in relation to Community Service Obligations and among others, recommended that the NCC adopt a more open transparent approach to its work and that all agencies involved in the NCP devote resources to ensuring community understanding and debate about the policy. A full list of the House of Representatives Committee's recommendations is at **Appendix 3**.

3.8 The NCC and the ACCC have attempted to address the concerns raised by the House of Representatives' Committee, particularly in relation to public education. For example, they have produced a range of newsletters and papers reporting the progress of NCP. However, evidence to this inquiry indicates that the community is still very much concerned about the issue. It seems clear to the Senate Committee that more needs to be done to educate and train the administrators of NCP.

3.9 The transparency of the work of the NCC and other jurisdictions would seem to be a perennial issue. Submissions to the Senate Committee and evidence taken during Public Hearings, claim that legislative reviews are still not open and transparent and that the contracting out of many public functions is putting them into the realm of 'commercial-in-confidence' and out of the scrutiny of the public. This issue is further considered in Chapter four.

3 Cultivating Competition, Inquiry into aspects of the National Competition Policy Reform Package, June 1997, Report from the House of Representatives Standing Committee on Financial Institutions and Public Administration, Parliament of the Commonwealth of Australia, AGPS, Canberra, pp xiii - xiv.

Productivity Commission Inquiry into the Impact of Competition Policy Reforms on Rural and Regional Australia

3.10 As a result of the House of Representatives' Committee Report, the Treasurer, the Hon Peter Costello, charged the Productivity Commission on 28 August 1998 with a review of the impact of competition policy reforms on rural and regional Australia. The Commission's Terms of Reference were:

The Commission's public inquiry should assess the impact (both transitional and ongoing) of the competition policy and related reforms introduced by the Commonwealth, State, Territory and local governments under the three intergovernmental agreements signed in April 1995 – the Competition Principles Agreement, the Conduct Code Agreement and the Agreement to Implement the National Competition Policy and Related Reforms. These agreements followed an Independent Committee of Inquiry into national Competition Policy that reported to Commonwealth, State and Territory Heads of Government in August 1993 (the Hilmer Report).

In undertaking the inquiry the Commission should have regard to the established economic, social, environmental, and regional development objectives of Australian governments. Consideration should be given to other influences on the evolution of markets in regional and rural Australia, including the role of international trade, foreign investment and globalisation generally.

The Commission should specifically report on:

- (a) the impact of competition policy reforms on the structure, competitiveness and regulation of major industries and markets supplying to and supplied by regional and rural Australia;
- (b) the economic and social impacts on regional and rural Australia (including on small businesses and local governments) of the changes to market structure, competitiveness and regulation flowing from the reforms and the effect of these impacts and changes on the wider Australian economy;
- (c) possible differences between regional and metropolitan Australia in the nature and operation of major markets and in the economic and social impacts of the reforms promoted by national competition policy; and
- (d) any measures which should be taken to facilitate the flow of benefits (or to mitigate any transitional costs or negative impacts) arising from competition policy reforms to residents and businesses in regional and rural Australia.

3.11 The Productivity Commission undertook an extensive program of community consultation meetings throughout rural and remote Australia. On 18 May 1999, the Commission released a Draft Report – "Impact of Competition Policy Reforms on Rural and Regional Australia". The Report formed the basis for valuable community

discussion and the Commission followed up the report with a further round of consultations. On 8 September 1999, the Commission released its final Inquiry Report with the following findings:

1. A large proportion of the fastest-growing country municipalities and smaller towns are located along the coast. Those experiencing falling population are predominantly in the interior or have economies dominated by a declining industry.
2. Many wheat and sheep farming districts often have a growing provincial centre or 'sponge city'. In part, the growth of the provincial centre is the result of the relocation of population from smaller towns and farms in the surrounding district.
3. Population growth in coastal regions is closely linked with growth in employment in the service industries, along with the number of older and unemployed persons. Other areas of country Australia are, on average, experiencing slower population growth than the rest of Australia, in part linked to slow growth or contraction in employment in agriculture and services.
4. In broad terms, Australia's development has followed the pattern of most developed economies. Notwithstanding the absolute growth of agriculture, mining and manufacturing, as shares of GDP the relative importance of these sectors have declined, while that of the services sector has risen.
5. Since the early 1980's both the level and variability of structural change has been greater in country Australia than the cities.
6. High rates of structural change in country Australia do not necessarily involve employment losses. Similarly, low rates of structural change are not always associated with high employment growth.
7. The long-term declines in the terms of trade for both agriculture and mining are major sources of structural change in country Australia. The agricultural sector has responded by boosting productivity and consolidating farms, resulting in greater output but reduced employment. The mining sector has increased output by increasing investment, in part to take advantage of new technologies.
8. The manner by which restrictions on competition may be considered under NCP is not well understood by many people. This is consistent with a wider lack of communication about, and hence appreciation of, what constitutes NCP and how it is implemented.
9. To date, relatively few reviews of statutory marketing arrangements have been completed and considered by governments. Consequently, it is too soon in the NCP legislation review program of statutory marketing arrangements to assess the overall effects of SMA reforms.

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10. The range of conflicting views on the validity and effectiveness of statutory marketing arrangements reinforces the importance of the NCP in reviewing the efficacy of such arrangements from the perspective [of] the community as a whole.
 11. Submissions and meetings across Australia indicated a widespread lack of awareness and understanding about the scope and application of competitive neutrality policy to the activities of local government.
 12. Levels of awareness and understanding about the provisions and operation of the public interest test are often inadequate to ensure that inappropriate implementation of competitive neutrality reforms at local government level does not occur.
 13. Competitive neutrality policy overlays and complements existing State government reforms designed to improve the efficiency and effectiveness of local government activities. In doing so, it reinforces the realisation of the benefits and costs of those broader reforms.
 14. Changing social patterns, such as more flexible working hours, the increase of women in the workforce and single parent households, have resulted in decisions by governments to make shopping hours more flexible. More liberal retail trading hours have weakened the competitiveness of some retailers. At the same time, they have been of benefit to consumers and appear to have increased employment opportunities, including in country Australia.
 15. Much of the legislation which restricts the sale of some goods and services to certain businesses is yet to [be] reviewed. The legislation review provisions of the NCP allow for the benefits to the community of restricting competition to be considered against the costs of such restrictions. To the extent that the benefits from these restrictions exceed their costs, restrictions on the sale of certain goods to specific retailers could be sustained.
 16. If the benefits of competition are to be realised – and confidence and certainty in an access regime promoted – there needs to be a willingness not only to implement the reform, but to ensure the arrangements are not so complex as to deter potential competitors from using the access regime or discriminate against infrastructure owners. Any problems resulting from the multiplicity of regimes is best addressed by the NCC in the course of certifying the State-based arrangements
 17. Infrastructure services represent significant costs for industries based in country Australia. NCP reforms affecting the provision of these services are producing productivity gains which have led to some employment losses but are also helping to make user industries more competitive and are benefiting consumers.

18. There would appear to be significant gains for the Australian community, and for country Australia as a whole, from implementing NCP reforms. The reforms are likely to have a more varied effect on country regions than in metropolitan areas, with implementation costs of some reforms being more evident in the former.
19. The effects on most, but not all, regions of the NCP reforms are likely to be less significant than those resulting from the broad economic forces which are continually reshaping economic and social conditions in Australia.
20. There may be a case for specific adjustment assistance packages where a concentrated adjustment shock occurs rapidly and is large relative to the size of a community. The decision to proceed with adjustment assistance will be influenced by the (direct and indirect) costs and benefits of an adjustment package tailored to a particular regional change relative to the costs and benefits of relying on general measures.

3.12 Based on these findings, the Commission made the following recommendations:

1. All governments should review in the year 2000 the information they provide about their National Competition Policy undertakings with a view to ensuring that it is:
 - accurate in terms of both its content and relationship to other policies; and
 - is publicly available and is provided to those implementing National Competition Policy reforms in a readily accessible form.
2. All governments should publish and publicise guidelines which:
 - outline the purpose and scope of the ‘public interest’ provisions of the Competition Principles Agreement; and
 - provide guidance on how the provisions should be interpreted and applied.
 - In the event that a common set of basic principles for application of the public interest test is developed jointly by governments, these also should be published and disseminated widely.
3. Governments should require major legislation review panels to ensure that their reports go further than simply determining compliance or otherwise with NCP principles. Reviews should be based on genuine public input, be conducted in a transparent manner and inform interested parties which and how reform, or maintenance of the status quo, will lead to superior outcomes and performance.

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4. In the case of reviews of anti-competitive legislation which may have significant impact extending across jurisdictions, the benefits and costs should be weighed in terms of the interests of Australians as a whole.
 5. The National Competition Council should no longer be asked to conduct legislation reviews.
 - 5.1 All benefit-cost studies of major new water infrastructure investments should be publicly available and should clearly identify the nature and magnitude of any social (including environmental) benefits.
 6. There should be no across-the-board extension of the NCP target dates.
 7. CoAG should give consideration to the formal extension of the rural water reform timetable for implementation of the water property rights and water allocation requirements.
 8. If governments consider that specific adjustment assistance is warranted to address any large regionally concentrated costs, such assistance should:
 - facilitate, rather than hinder, the necessary change;
 - be targeted to those groups where adjustment pressures are most acutely felt;
 - be transparent, simple and of limited duration; and
 - be compatible with general safety net arrangements.
 9. Governments should rely principally on generally available assistance measures to help people adversely affected by NCP reforms.

Western Australian Parliamentary Standing Committee on Uniform Legislation and Inter-governmental Agreements

3.13 The Western Australian Parliamentary Standing Committee on Uniform Legislation and Intergovernmental Agreements has also conducted a review of the NCP and its operation in that State. The Committee has produced two reports, the first tabled in 1996 and a further report in 1999. In the first report, (Chairman's Foreword) the Committee criticised the Hilmer report for not adequately dealing with accountability issues in relation to businesses with community service obligations.

3.14 The 1999 Report focussed on the progress on restructuring of State public enterprises and the impact of such changes on the provision of community services. The report concluded that 'governments at all levels throughout Australia and overseas have for years undertaken reforms such as deregulation, reform of

government business enterprises, and measures to prevent anti-competitive behaviour with explicit intention of improving economic performance by enhancing competition.’⁴

3.15 In accord with the findings of other inquiries, the Western Australian Committee found:

- a need for an integrated approach to deregulation taking into account social, cultural, environmental and political consequences;
- confusion about NCP because it has been introduced along with a raft of other related reforms such as competitive tendering, public sector downsizing etc;
- while there is general support for NCP, there needs to be safeguards to ensure that essential public services continue to be delivered at a standard and reasonable price;
- it is difficult to separate the impacts of NCP from those of other related policies, such as tariff reductions;
- the pace of economic change has created uncertainty and distress, most evident in rural and regional areas; and
- the benefits of NCP are poorly understood and the disadvantages are often exaggerated.

3.16 The Western Australian Committee made a number of findings and those of particular interest to the Senate Select Committee's inquiry are listed below:

- that the delivery of community service obligations should not be compromised by National Competition Policy. It is a matter for governments to decide the nature of community service obligations, which sections of the community they should target and the level of service to be provided from public funds. National Competition Policy does not require reductions in subsidised community services.
- that there was a misapprehension that National Competition Policy prevented the provision of community service obligations. This is not the case. There is nothing within the National Competition Policy principles that prevents the continued provision of community service obligations. It is a matter of openness and transparency for governments to reveal how much the service is being subsidised and to allow them to make considered decisions on such information.

4 Western Australian Parliamentary Standing Committee on Uniform Legislation and Intergovernmental Agreements, Competition Policy and Reforms in the Public Utility Sector, Twenty-Fourth Report, Legislative Assembly, Perth, 1999, p xiv.

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- that National Competition Policy does not necessarily require privatisation, the contracting out of services provided by the public sector to outside businesses or the need to make cuts in subsidised services.
 - that there were concerns by some sectors regarding the maintenance of uniform tariffs in a fully deregulated market. However, in some limited circumstances they can be justified.
 - that because of the infrastructure requirements and the range of subsidies that are required, overseas experience has demonstrated that it is better for the supply of water services to remain in public ownership, except in some isolated cases under special circumstances.
 - that the pace and direction of deregulation, and privatisation was of concern to some export orientated sectors of industry but that given time they have the capacity to accommodate change.
 - that there is a strong perception that rural and regional economies have been adversely affected by the reduction of services and contracting out of essential services.
 - that market forces are global, but the social fallout that policy makers have to manage are local.
 - that although competition policy espouses at the lowest cost, there are social costs which must be taken into account. There are also ramifications for professional standards in the future.
 - that with corporatisation, public utilities have been removed from the scrutiny of the Parliament and are now subject to corporate governance. They operate to increase profits and dividends without necessarily considering the public interest.
 - that there were doubts in the community about the economic and social benefits of outsourcing and privatising some services which are traditionally provided by the public sector.
 - that the pace of reforms has not been matched by a similar rate of change in the public's perception about the delivery.
 - that the privatisation of public utilities often raised questions of public welfare. The perception is often that even when precautions to ensure public benefit and the supply of essential services have been made a condition of sale, these may not, in some cases, be able to be maintained.
 - that National Competition Policy only requires that the operations of public utilities should be examined to ensure that services are provided to the public in the most effective and efficient manner and also that other providers can enter the market on fair and equitable terms.

- that downsizing, contracting out and tendering has sometimes had dramatic effects in some rural communities. It has had an effect on the social fabric of communities. As people once employed by the local shire leave the town, there are spill over effects in the schools, sporting clubs as well as the local businesses.
- that there existed a public perception about the lack of accountability, as well as questions about whether governments should outsource their community service obligations through contractual arrangements, thereby switching to private law accountability mechanisms.
- that it was commonly believed that there has been a tendency towards restricting information to the public since the outsourcing of services, owing to the private sector's reliance on confidentiality.
- that local authorities in regional and rural areas have with the implementation of contracting out and tendering initiatives been more adversely affected because the impact is much greater if jobs are lost in the local community.
- that there was widespread misunderstanding about the National Competition Policy.

3.17 The Senate Select Committee has heard similar concerns to the findings of the Western Australian Committee throughout its own inquiry.

3.18 The WA Standing Committee made a number of recommendations on the impact of National Competition Policy on Western Australian public utilities:

Recommendation One

That the Government develops a strategy of public information and consultation before it proceeds with the privatisation of public utilities.

Recommendation Two

That where a substantial Government asset is to be sold that this be achieved, where possible, by public float with preference given to Western Australian investors.

Recommendation Three

That consideration be given to the establishment of an independent energy industry regulator.

Recommendation Four

That because of the infrastructure requirements and the range of subsidies that are required, for the most part, the government retain water services in public ownership.

Recommendation Five

That the accounting and funding of community service obligations be made open and subject to scrutiny.

Recommendation Six

That the Public Accounts and Expenditure Review Committee should examine community service obligations in Western Australian public service delivery.

Recommendation Seven

That private sector service providers who provide services on behalf of the Government be subject to the same administrative law provisions as the public sector.

Recommendation Eight

That the Government consider reforming public and private laws to ensure that a contractor's decisions and actions are reviewable as if they were performed by a government agency, if they are performed on behalf of the Government.

Recommendation Nine

That the Government introduce processes for contracts with contractors who provide services previously provided by the public sector, that require the contractors to provide sufficient information to allow proper Parliamentary scrutiny of the contract and its management.

Recommendation Ten

That when contractors provide services previously performed by the public sector, that the Government require those contractors to provide sufficient information to enable the Auditor General to carry out a performance audit of the contractors performance under the contract.

Recommendation Eleven

That the Government provide a commitment to ensure a free flow of information where government services have been privatised and outsourced.

Recommendation Twelve

That the powers of the Auditor General be extended to ensure proper scrutiny of privatised and outsourced functions.

Recommendation Thirteen

That the Government consider the establishment of a Regulator General to investigate and resolve complaints about contractors who deliver services on behalf of the Government.

Recommendation Fourteen

That the Government consider whether it is practicable for recipients of services formerly provided by the Government and now provided by a private sector provider to obtain information under the Freedom of Information legislation.

Recommendation Fifteen

That the Public Accounts and Expenditure Review Committee undertake a review of the contracting out and outsourcing of services and functions previously undertaken by the public sector.

Recommendation Sixteen

That the Government constantly review the implementation of National Competition Policy reforms and address any adverse affects in Western Australia particularly in rural and regional areas.

Recommendation Seventeen

That the Government implement measures to ensure that the export sector of the Western Australian economy benefits from the implementation of National Competition Policy.

Recommendation Eighteen

That the Government as part of the National Competition Policy, reform government business enterprises, by restructuring them and making them compete with private businesses as well as monitoring prices where the government business retains a monopoly.

Recommendation Nineteen

That the Government undertake an educative role on the nature of National Competition Policy, specifically the nature of the reforms relating to the extension of the *Trade Practices Act 1974*, review of anti-competitive legislation, the restructure of public monopolies, the introduction of competitive neutrality, third party access to essential facilities and prices surveillance of government businesses.

Recommendation Twenty

That any commercial enterprise of Government be subject to the scrutiny of the Auditor General to ensure that the balance sheets of the business reflect the true costs of operations.

3.19 The Senate Committee is of the view that many of the findings and recommendations of the WA Committee are of relevance to its own findings and recommendations. In particular, the Senate Committee supports the recommendations to improve public information and consultation, transparency of funding of community service obligations, provisions for scrutiny of contracts carried out on behalf of government agencies, and to provide for free flow of information. See **Appendix 4** for the Committee's recommendations from its earlier report.

Senate Rural & Regional Affairs & Transport References Committee Inquiry into the Effects of Deregulation of the Dairy Industry (The Dairy References Committee)

3.20 On 23 March 1999, the Senate referred the following matters to the Dairy References Committee for inquiry and report:

(a) future domestic and international marketing conditions facing the Australian dairy industry and those factors which are influencing Australia's competitiveness in these markets;

(b) the pressures on the current industry regulatory arrangements such as the introduction of new technologies and competitor supplier countries such as New Zealand;

(c) the impacts associated with the removal of the Domestic Market Support scheme on:

- (i) the dairy industry and rural and regional communities, and
- (ii) state marketing arrangements; and

(d) measures which may be taken by government to facilitate the transition to a less regulated environment.

3.21 This inquiry was of particular interest to the Senate Select Committee on Competition Policy as the Dairying Industry is a significant one and the inquiry raised a number of serious issues in relation to the administration and management of NCP and deregulation processes.

3.22 The purpose of the inquiry was to investigate the domestic and international marketing and regulatory arrangements for the industry, proposals for regulatory change, the impacts of any change and measures to facilitate that change.

3.23 The Australian Dairying Industry has been subject to review and restructuring since the 1960's, however, the latest impetus for deregulation resulted from the legislative review requirements under the National Competition Policy. All State governments undertook to review, and if appropriate, reform all legislation that restricts competition by the year 2000. The dairy industry was identified as being one of the legislative regulatory regimes requiring review in each State. All States have, or will shortly have, completed reviews of their dairy industry regulatory environments.

3.24 The Dairy References Committee found that deregulation will affect all sectors of the dairy industry, but will have different effects depending on the region and the mix of market and manufacture milk produced within a State or by a dairy farmer. The References Committee noted, that there is very little support for deregulation outside Victoria, while within Victoria and Tasmania, where deregulation will have the least impact and potentially the most benefit, the issue has divided farmers. All but the Victorian reviews concluded that the timeframe for deregulation of the industry should be extended.

3.25 Of major import for the industry, however, is the belief that if Victoria deregulates, the commercial reality is that the rest of the country will be forced to follow.

3.26 The Dairy References Committee identified the beneficiaries of the retention of the current regulatory arrangements as:

- farmers;
- the consumer; and
- the regional economies which are heavily dependent on the dairy industry.

3.27 The dairying industry is the third largest rural industry, (behind beef and wheat) and the third largest exporter of dairy products worldwide, after the European Community and New Zealand. Dairying is Australia's largest rural industry valued at the wholesale level (\$7 billion).⁵

The world market for dairy products is characterised by trade in heavily subsidised product from Europe and the US and is treated as a residual market by most countries except Australia and New Zealand. While import barriers (tariffs and quotas) are a major impediment to the Australian dairy industry expanding its export base, other factors include world prices and competition from New Zealand in a static domestic market.⁶

3.28 The Dairy References Committee noted that deregulation of the industry would mean that it would be the only dairy industry in the world without Government legislative support. New Zealand continues to have significant Government legislative support through its single desk export facility. Australia is relatively unique in that its approach to the industry links domestic growth and profitability with international competitiveness. The Dairy References Committee noted:

The NCP guidelines are based on the assumption that competition is of benefit to the public; but that if restrictions are to be retained it is necessary to demonstrate a net benefit to the community as a whole. Under the test, governments are required to weigh up the likely positive and negative effects on areas such as access and equity, social welfare, economic efficiency, [social welfare [sic], employment and business competitiveness, with equal weight being given to economic and social considerations in the assessment. Responsibility for determining where the public interest lies is with the States and Territories.⁷

3.29 The report listed a number of concerns with regard to the proposal to deregulate the industry, including:

- the assessment of the public interest under the terms of NCP;
- the impact on farmers income;
- failure to address the issue of compensation for quota;

5 Deregulation of the Australian Dairy Industry, Report of the Senate Rural & Regional Affairs & Transport References Committee, October 1999, Executive Summary, pxi.

6 Deregulation of the Australian Dairy Industry, Report of the Senate Rural & Regional Affairs & Transport References Committee, October 1999, Executive Summary, pxii.

7 Deregulation of the Australian Dairy Industry, Report of the Senate Rural & Regional Affairs & Transport References Committee, October 1999, p 66.

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- the impact on rural and regional communities;
 - the absence of a thorough investigation of the national consequences of deregulation with State reviews being undertaken piecemeal; and
 - less than comprehensive assessment of the public interest in the reviews.

If deregulation is undertaken:

- an abrupt loss of income would result for farmers across Australia as farmgate prices are aligned;
- a reduction in the value of capital assets including quota entitlements;
- loss of countervailing market power by farmers who will be subject to the market power of the major processors and retailers; and
- the adequacy of the restructure package.

3.30 The Dairy References Committee was concerned that such changes are likely to result in potentially significant social and regional impacts, since the dairying industry is a major industry and any negative impacts will have multiplier effects on regional economies. The Dairy References Committee also expressed concern that there will be a transfer of wealth from rural producers to the cities – the effect of industry profits passing to the retailing and processing section will mean the repatriation of profits to shareholders, both within Australia and from overseas, whereas profits retained in the community in the form of income to farmers generally stays in the community. The Dairy References Committee's report highlighted the lack of any demonstrable or substantive gains for farmers or consumers.

3.31 The social impact on regional economies was an issue of major concern in submissions to the Dairying Inquiry and evidence taken at public hearings. Of particular note is the fact that few supported the prediction that consumer prices for milk would fall.

3.32 The Dairy References Committee noted that the reviews of the dairying industry regulations are typical of the concerns expressed in the Senate Select Committee's interim report namely:

- confusion about the application of the public interest test;
- a predominance of narrow economic interpretation of the public interest test due to the administrative ease of simply seeking to measure outcomes in terms of price changes and narrow cost/benefit analysis;
- differing interpretation of the policy between States;
- a lack of transparency of reviews; and
- a lack of appeal mechanisms.

3.33 The Commonwealth Government has recently announced a national re-structure package of \$1.25 billion to manage simultaneous orderly removal of the DMS arrangements and market milk regulations on 30 June 2000 following a proposal by the Australian Dairy Industry Council (AIDC) which took the view that deregulation is inevitable.

3.34 The purpose of the re-structure package would be to provide farmers with the option of either remaining in the industry and re-structuring or exiting the industry.

3.35 Despite this, the Dairy References Committee questioned whether the perceived benefits are worth the disruption and adverse consequences which will flow from the deregulation.

3.36 The Dairy References Committee expressed the view that farmers and regional economies will suffer under deregulation and, at best, the position of the consumer will not be improved.

3.37 Of further concern was its findings that the winners from deregulation in the short term are the two major co-operatives, other processor and manufacturing companies.

Many of the witnesses and submission have requested the Commonwealth Government to demonstrate some 'political courage' and take an appropriate leadership role by intervening in the deregulation process, in the interests of the dairy industry and the regional areas which are dependent on that industry.⁸

3.38 The Dairy References Committee recommended that:

- the Deputy Prime Minister and Minister for Transport and Regional Services and the Federal Minister for Agriculture, Fisheries and Forestry [Government][sic] call, as a matter of urgency, a meeting of State Agriculture and Regional Development Ministers to determine a framework, and a timeframe, for the co-ordinated deregulation of the Dairy Industry.
- that should administrative arrangements not be in place in time to make the first payments by 1 July 2000, that appropriate compensatory arrangements are factored into the payments schedules, in order that dairy farmers do not suffer any more financial hardship than is presently envisaged:
- that the States of Queensland, New South Wales and Western Australia consider the issue of quota entitlement and any form of compensation that may be appropriate for the resumption of quota entitlement, including the possibility of using NCP payments as compensation:

8 Deregulation of the Australian Dairy Industry, Report of the Senate Rural & Regional Affairs & Transport References Committee, October 1999, p 170.

- that regional adjustment packages for rural and regional communities affected negatively by deregulation be developed by States and Commonwealth Governments:
- that the Australian Competition and Consumer Commission in accordance with subsection 17(1) of the Prices Surveillance Act monitor costs and prices in the dairy industry so that dairy farmers are not unfairly burdened with the cost of the proposed levy:
- that an inquiry into the operations and accountability mechanisms of cooperatives be undertaken.

Report of the House of Representatives Standing Committee on Industry, Science and Resources *The Effect of Certain Public Policy Changes on Australia's R & D, August 1999*

3.39 The House of Representatives Committee was asked to inquire into and report on:

the effect of public policy changes, over the last ten years, in the areas of corporatisation, privatisation, outsourcing and competition policy reform on the matters listed below:

- *the amount of R&D being carried out in Australia;*
- *the nature of the R&D being undertaken (that is, basic or applied);*
- *the relevance of the R&D to the commercial needs of industry;*
- *the level of investment in research infrastructure and equipment;*
- *the scientific and technological skills base and the demand for scientists, technologists and engineers; and*
- *the education and training opportunities for future research staff.*

3.40 The House of Representatives Committee noted:

The inquiry was prompted by concerns that competition policy, privatisation and outsourcing during the past decade may have had an adverse effect on the R & D conducted in those corporatised or privatised public sector agencies (such as the energy utilities) now operating in a commercial environment.

The potential adverse effects include: a concentration on short-term rather than longer-term R&D; a downgrading of unprofitable "public good" R& D and data collection functions; uncertainty over the ownership of data; and

decreased R&D co-operation between corporatised/privatised agencies, as well as between those agencies and external R&D providers.⁹

3.41 The House of Representatives Committee found:

A difficulty with assessing the effects on R&D of the competition policy process is that it is being applied at varying speed to different utility sectors different organisations within sectors and comparable sectors in different States. Quarantining the effects of public policy changes on R&D is difficult, and accurate data is not readily available.¹⁰

3.42 It was suggested to the Committee that the corporatising of government utilities has encouraged an atmosphere of commercial secrecy around R&D. Nevertheless, the House of Representatives Committee found that:

There is no direct evidence that the energy and water utilities' total R&D spending has diminished – figures supplied by the Department of Industry, Science and Tourism (DIST) in fact suggest a substantial increase in R&D within the gas, electricity and water industries in the decade under review. However, it appears that those funds are being allocated to fewer projects. Analysis of company-level data shows that the commencement of a few large projects accounts for almost all of the increase in gas and electricity R&D.¹¹

3.43 A number of issues were raised with the Committee including:

- the need to identify public utilities' R&D activities – particularly “public good” R&D and data collection – before corporatisation or privatisation;
- the need to maintain public sector support for long-term research
- competitive pressures causing firms to cut their R&D and purchase “off-the-shelf” solutions, particularly from overseas;
- loss of ‘critical mass’ for R&D in sectors such as water and electricity as they are unbundled and therefore the need to provide mechanisms to encourage the ‘critical mass’ for effective R&D;
- decreased willingness of the new agencies to co-operate either with each other or with external R&D agencies;

9 The Effect of Certain Public Policy Changes on Australia's R&D, Report by the House of Representatives Standing Committee on Industry, Science and Resources, August 1999, Executive Summary, p vii.

10 The Effect of Certain Public Policy Changes on Australia's R&D, Report by the House of Representatives Standing Committee on Industry, Science and Resources, August 1999, Executive Summary, p 1.

11 The Effect of Certain Public Policy Changes on Australia's R&D, Report by the House of Representatives Standing Committee on Industry, Science and Resources, August 1999, Executive Summary, p xvi.

- competition policies have clearly led to a more management–driven focus with a resultant reduction in basic and long-term research, and concern that corporatised energy utilities’ reducing their interest in renewable energy research, for example;
- concern at the application of competitive neutrality principles to the research sectors such as CSIRO and various tertiary institutions;
- outsourcing of public sector functions including R&D has benefited tertiary institutions, however, there has been a shift to short-term projects away from long-term and a concern that policies such as privatisation have led to a loss of in-house R&D expertise;
- contracting-out hospital services appears to have had potentially serious effects on health research. The National Health and Medical Research Council (NHMRC) informed the committee that services and facilities previously made available through the public hospital system have been withdrawn, or only made available at high cost. One unintended consequence may be to undermine on-site clinical research;
- concern regarding the impact on employment - reduced employment in the public sector has meant the loss of some training opportunities. The research community is concerned about the implications of the sale of utilities overseas for employment opportunities and the change from permanent to casual and short-term contracting.

3.44 The House of Representatives Committee made a number of recommendations of relevance to the Senate Select Committee including:

recommendation 2

As part of ongoing reforms in the water sector, the government seek the agreement of the Council of Australian Governments on common standards for:

- *continued public access to water flow and water quality data collected by the former public sector water utilities; and*
- *ongoing responsibility, either through nominated public sector agencies or the new water service providers, for collecting such data and making it publicly available;*

recommendation 3

that the government propose to the Council of Australian Governments that a stocktake of the R&D activities of utility service providers be carried out, to quantify any substantial loss of such activities-particularly those with a “public good” component – resulting from the application of competition policy and like reforms to the electricity, water, gas and telecommunications sectors. A possible mechanism for such a stocktake could be a review by the National Competition

Council. Where functions of net benefit to the community are no longer being performed due to a lack of commercial incentives, those functions should be either:

- *performed by the new service providers and funded by the government in a manner similar to a Community Service Obligation; or*
- *transferred to an appropriate public sector research agency, again, with funding adjustments as required.*

that the government propose to the Council of Australian Governments that, in future, R&D activities undertaken by competition policy reform targets be identified at an early stage of the reform process. Where the continued performance of non-commercial 'public good' and longer-term research is deemed to be desirable, arrangements should be made as per recommendation 5;

that the government bare in mind the public good when setting the external earnings targets for Commonwealth research targets for Commonwealth research agencies.

Senate Finance and Public Administration References Committee Report on the Contracting-out of Government Services (Second Report)

3.45 On 4 November 1996, the Senate referred the following to the Finance and Public Administration References Committee:

- (a) how best to ensure that the rights, interests and responsibilities of consumers, contracted service providers and government agencies can be defined and protected; particularly
 - (i) whether contracting-out arrangements should be governed by written contracts between the government agency and the service provider in all cases;
 - (ii) whether contracts should contain standard clauses dealing with matters such as responsibility for record keeping; complaints and dispute resolution procedures; allocation of responsibility between the contracting agency and the contractor in the event of financial or other loss on the part of the consumer; and
 - (iii) definition of standards of service.
- (b) The adequacy of tendering procedures adopted by government agencies in contracting-out services.
- (c) Whether the jurisdiction of the Ombudsman's Act 1976 should be extended to ensure that it covers all contracted out government services.
- (d) Ministerial responsibility to Parliament for contracted out services, noting that in other parliamentary systems it has been argued that, with

regard to corporatised or contracted out government services, Ministerial responsibility extends only to policy issues and does not encompass questions of day-to-day management and operation.

- (e) Whether and to what extent claims of commercial-in-confidence should be accepted as limiting the right of Parliament to examine contractual arrangements between government agencies and service providers.

3.46 The Committee's Terms of Reference were extended to include information technology and this was the subject of a separate report. The Senate Select Committee confined its review to the general contracting report.

3.47 A particularly salient point is made in the introduction to the report:

The difference between good examples and unsuccessful examples of contracting-out will largely come down to the extent to which good practice has been followed from the initial stages of making a decision to contract out a service through all stages of the process. If this is not done, in the words of the Auditor General,

There is clear evidence that, if poorly managed, competitive tendering and contracting can result in higher costs, wasted resources, impaired performance and considerable public concern about the waste of tax payers funds.¹²

3.48 The Committee examined a number of successful and unsuccessful tender processes against the background of the requirements of the Commonwealth Procurement Guidelines and noted that with respect to tendering:

It is absolutely vital that the process be carried on with the highest standards of probity if that satisfaction [satisfaction of the supplier community] is to be maintained. Tendering can be an expensive process particularly for smaller enterprises. Its outcome can be crucial to a business's future development. It also involves direct and public comparison with a company's competitors. If unsuccessful tenderers are not satisfied that process is absolutely fair, or agencies cannot demonstrate that it was, then companies will be unwilling to tender for government business in the future. In addition, flawed tendering processes will undermine public confidence. This would undermine the potential benefits to be gained from competition among suppliers.¹³

3.49 The Senate Select Committee did not inquire into the effectiveness of the contracting-out of government services but is concerned at the evidence which it did

12 Senate Finance and Public Administration References Committee, Contracting-out of Government Services, Second Report, May 1998, p 2.

13 Senate Finance and Public Administration References Committee, Contracting-out of Government Services, Second Report, May 1998, p 13.

obtain in relation to the contracting-out of local government services and services in the social welfare area.

3.50 The Finance and Public Administration Committee examined issues such as accountability of contractors, privacy and protection of information and commercial confidentiality. These aspects were outside of the scope of the Senate Select Committee's inquiry.

Summary

3.51 The debate about the National Competition Policy in Australia and its relative costs and benefits has resulted in numerous inquiries. Australians have been asked to accept a vast array of economic reforms and social changes on face value, often without explanation and are called to accept that many of the basic services they have come to rely upon from government will be provided by private enterprise. Consequently, there is cynicism about the NCP, the motives for its implementation and its costs and benefits.

CHAPTER 4

THE PUBLIC INTEREST TEST AND ITS ROLE IN THE COMPETITION PROCESS

“.. the best definition of public interest was in fact expressed in two words, public interest, because that then defies every attempt by those that wish to try and confine the public interest.”¹

4.1 In the interim report the Committee identified, as a recurring theme, difficulties with the way in which NCP has been implemented. Prominent among these difficulties have been problems with interpreting and understanding the Public Interest/Public Benefit Test, including:

- a lack of understanding of the policy;
- a predominance of narrow economic interpretation of the policy rather than wider consideration of the externalities;
- a lack of certainty between States and Territories as differing interpretations of the policy and public interest test, result in different applications of the same conduct;
- lack of transparency of reviews; and
- lack of appeal mechanisms.

4.2 The response to the Interim Report has confirmed the Committee’s concerns. In the Committee’s view, the failure to properly explain NCP has contributed to these serious problems. Without a good understanding of the policy, the Committee cannot see how those applying it, those directly affected, or the broader public, can effectively contribute to the policy’s development or application.

Public interest/benefit test

4.3 In its Interim Report the Committee canvassed the difference between the public interest test of the NCP and the public benefit test of the ACCC.

4.4 The need for public debate and understanding has not diminished.

Public benefit has been and is given wide ambit by the Tribunal as, in the language of QCMA (at 17,242), ‘anything of value to the community

1 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 826.

generally, any contribution to the aims of society including as one, of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress'. Plainly the assessment of efficiency and progress must be from the perspective of society as a whole: the best use of society's resources. We bear in mind that (in the language of economics today) efficiency is a concept that is taken to encompass 'progress' and that commonly efficiency is said to encompass allocate efficiency, production efficiency and dynamic efficiency.²

4.5 The need for involvement of political leaders has been made clear by Mr Samuel.

We are faced with an imperative that those who provide our political leadership all around the country need, first of all, to become champions of reform, if they consider it to be in the public interest. The very public interest test suggests that this reform ought to be not only in general form, but in very specific form and very much in the public interest. We need champions of this reform at political leadership level right across the country. We also need champions of the reform to counter the negative publicity.³

4.6 The Committee has received many expressions of concern about the application of the public interest test.

4.7 Clause 1(3) of the Competition Principles Agreement provides that Governments are able to assess the net benefits of different ways of achieving particular social objectives:

Without limiting the matters that may be taken into account, where this Agreement calls:

- a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
- b) for the merits or appropriateness of a particular policy or course of action to be determined; or
- c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

- d) government legislation and policies relating to ecologically sustainable development;
- e) social welfare and equity considerations, including community service obligations;

2 Victorian Newsagency Decision, ATPR 41-357 at 42,677.

3 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 845

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- f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
 - g) economic and regional development, including employment and investment growth;
 - h) the interests of consumers generally or of a class of consumers;
 - i) the competitiveness of Australian businesses; and
 - j) the efficient allocation of resources.

4.8 The Committee continues to be concerned about the application of ‘public interest’ given the confusion that exists over what the term means or allows under NCP. The confusion, when combined with the administrative ease of simply seeking to measure outcomes in terms of price changes, encourages the application of a narrow, restrictive, definition. The Committee considers that it is important to devise a method of assessment of the policy which attributes a numerical weighting to environmental and social factors to avoid the over-emphasis on dollars merely because they are easy to measure. Mr Waller advised the Committee that:

In summary, it is a difficult area. There are problems of methodology, there are problems about the practical application of the policy. Underlying all this, I would say that I think that, in net benefit terms, the national competition policy arrangements are of major value to Australia in meeting the problems it faces globally.⁴

4.9 The Committee recognises the argument that the NCP has contributed to Australia’s success in meeting the problems it faces globally, particularly, the economic shocks that came out of the “Asian melt down”. However, even if it is accepted that that is the case, the country’s overall ability to cope internationally is not always fully appreciated in the face of lost jobs, reduced pay and conditions, failing or lost social infrastructure, or the other adverse consequences of structural change that are perceived to be attributed to NCP. As noted in Chapter Four:

market forces are global, but the social fallout that policy makers have to manage are local⁵

4.10 The level of understanding was clearly highlighted by the research of the Productivity Commission:

Our analysis of that is that the factors that can be considered in the public interest are extensive and non-exhaustive, and we did not perceive any reason for changing the scope of what could be considered as public interest.

4 Mr M Waller, Committee Hansard, 1 November 1999, p 841

5 Mr M Waller, Committee Hansard, 1 November 1999, p 841

..... there is very poor perception out there. I will use local government as the example and I will also use the Shire of Jerramungup, because they gave us a submission very early in the piece and they perceived that national competition policy, in particular implementing competitive neutrality, debarred them from delivering community service obligations.

That was not just an isolated instance. That was quite typical of the sort of misunderstanding that we came across when we were holding workshops around the place: what factors could be considered to limit competition, in what circumstances and what criteria? That led to a number of our findings. We had made a finding in chapter 11. It says:

The manner by which restrictions on competition may be considered under NCP is not well understood by many people. This is consistent with a wider lack of effective communication about, and hence appreciation of, what constitutes NCP and how it is implemented.

We have seen the need for quite a lot of information about that.⁶

4.11 The consequences of this can be seen in the welfare sector as discussed in Chapter Five. The Committee also notes that the greater the intrusion of NCP into areas with volunteer work being undertaken, such as in welfare areas, the greater the propensity for volunteers to withdraw their labour. In these circumstances, policies directed at realising efficiencies may result in restricted outputs. Whilst services may then be more efficiently delivered on an upfront dollar basis, it is questionable that the public interest will have been served.

Recommendation

1. *For the purposes of measuring outcomes of the policy, a method of assessment be agreed by CoAG which will provide a numerical weighting that can be attributed to environmental, social and employment factors, wherever possible.*

Need for Education

4.12 Public understanding of NCP has been a fundamental problem since the policy's inception in 1995. As far back as 1996, academics and administrators alike have been concerned about the policy being presented in a manner which suggested the changes ought to be accepted on faith. The 'top-down' mandatory approach adopted by the NCC and other Commonwealth and State/Territory CP units, have not, with hindsight, been as successful nor widely accepted as it could have been. Successive policy analysts have warned of the dangers of this approach.

4.13 It is only then that it will be possible to assess the level of acceptance of NCP because it is only then that it can be established whether a fully informed community agrees with ideology behind NCP and would continue to pursue the policy.

6 Mr H Plunkett, Assistant Commissioner, Productivity Commission Committee Hansard, 1 November 1999, p 843

4.14 As the Committee noted in the Interim Report, in 1997 the House of Representatives Committee's Inquiry recommended that the ACCC and the NCC adopt a more open and educative approach to their respective roles. Specifically, that Committee noted:

So far there has been little discussion in the community on competition reforms.

To date there has been little public education with the result that several States/Territory governments now list common misconceptions related to the reforms in their policy statements. Many rural councils are particularly concerned about this issue....

There is a need for a major ongoing program of public education which outlines the contents of the policy and stresses the outcomes (runs on the board). All agencies involved in the competition reform process must be involved, not just the NCC and ACCC.⁷

4.15 In response to this criticism, the NCC and ACCC have produced reports and pamphlets, attended seminars and given speeches in support of National Competition Policy. Notwithstanding those efforts, there has been continued confusion and a lack of community awareness and low levels of administrative understanding. There is a need to educate and inform many bureaucratic and government officials before they seek to educate and inform the public.

4.16 Some critics argue that the problem lies in the attitude of government officials and what is perceived to be an emphasis on economic policy advocacy rather than an explanation of the full workings and impact of NCP. Others tend to argue that there has been a lack of sophistication in administration or political comment:

One of the problems we have encountered right from day one-you might say over the last two years-is that there has been a limited understanding of NCP generally. That is no fault of the Local Government Association or the local government department. They have done an excellent job in making training available and also circulating relevant material. Another problem is the shared vision between councillors and officers-and that may be regarded as a general problem in the local government industry-and also a lack of resources.....In Queensland local government, there is a lot of misunderstanding about NCP.⁸

4.17 An unfortunate conclusion reached by the Committee is that governments have at times contributed to the confusion over the public interest. They have done this by citing NCP, and by implication, the Commonwealth Government, as the reason

7 Cultivating Competition, Inquiry into aspects of the National Competition Policy Reform Package, June 1997, Report from the House of Representatives Standing Committee on Financial Institutions and Public Administration, Parliament of the Commonwealth of Australia, AGPS, Canberra, p 67.

8 Mr D Mullins, Chief Executive Officer, Esk Shire Council, Committee Hansard, Brisbane, Thursday, 8 April 1999, p260.

that policies such as compulsory competitive tendering have been introduced; that particular development and infrastructure projects have been rejected; that assistance was not extended to a proposal, or funding was reduced. Such actions bring the policy into disrepute.

4.18 Not all of the distrust or disagreement with the NCP stems from a lack of understanding of the policy. Many people with a very good understanding of the objectives and underlying premise of the NCP have made a fully educated judgement, that either they are ideologically opposed to it, or that they do not agree with the philosophy behind the policy, or with the method of implementation.

4.19 As noted below the outcome of any assessment of the value of NCP may depend on the time of the assessment against where the impact of the policy is falling - NCP may be adjudged 'a good thing' and later 'a bad thing' by the same person or group. This means that education is not going to be an easy task, because, as pointed out by Mr Kerr of the Productivity Commission:

Similarly, although this is a little bit harder to give a particular example of, you might conceive of differences over time in the calculus of benefits. People might have different preferences as to when benefits are received. Although early losses, early difficulties, may be in time overtaken by later benefits, people may quite properly have different perspectives as to how important early adjustment changes are vis-a-vis later benefits as they arrive. So the calculus over time is difficult.⁹

4.20 The degree of this difficulty can be seen in the interchange of discussion between the Committee and Mr Ritchie, Director Economic Policy, National Farmers Federation and considering the NFF's aggressively pro-reform position in the tariff reduction debates and other sectors, such as the water front, when it had adjudged the interests of its members to be negatively impacted:

The review we will have next year is a one-off opportunity to have a good look at national competition policy. Let us have a look at the underlying assumptions of national competition policy, not the least of which is this underlying assumption that the user should pay for everything rather than taking external benefits into the equation. Let us have a look at the public interest test and its application and let us have a look at things like adjustment assistance and whether any of that money flows through.

...

Also, let us think about the underlying assumption that seems to be here at the moment that national competition policy is a good thing until proven otherwise. When did we have the proof that national competition policy is a good thing? Why can't we turn it around and say national competition policy might have been a bad thing and let us prove it is a good thing? I am not

9 Mr R Kerr; Head of Office; Productivity Commission; Committee Hansard, 1 November 1999, p 843

saying that that is the case but I am just upset that the assumption is that it is a good thing until proven bad, and not the other way around.

Senator LIGHTFOOT—What is your assumption? Is it good or bad?

Mr RITCHIE—I do not think we have the evidence in, but I am upset that the assumption seems to be that it is a good thing. Until somebody like us can come and prove it is a bad thing, and when we have only got five years history, that is a very difficult thing to do.

Senator LIGHTFOOT—What is your assumption, Mr Ritchie?

Mr RITCHIE—My assumption is that obviously we support some of the initial gains that have been made under national competition policy, but in areas such as infrastructure, NFF is starting to have some real, serious concerns. The picture that Rod Nettle painted about what is going to happen to rural and regional Australia is not a difficult picture for us to extrapolate to, either. If you apply a strict principle of user pays to the provision of infrastructure, then you are not going to have a rural and regional Australia to worry about in 25 to 50 years because nobody out there can afford to pay.

This is the whole principle of externalities under which economic theory had been working for 100 years until we decided to throw it out in 1994. Let us go back and see if that was a sensible decision to throw out the principle of externalities and external benefits.

4.21 Senator McGauran was also interested in determining the shift in the NFF's position:

And to the NFF representative, I read in the Australian newspaper the other day, and you have reinforced the comments today, that the NFF are being seen to be shifting in regard to national competition policy. You are basically saying it is the end of the road, any advancements now have to be strictly scrutinised. You do have a lot of economists in your buildings, and I do not know why you would be concerned about putting a presentation to any review. But we are down to the minutiae, and the NFF now have had a complete second thought and are basically wishing to grind NCP to a halt. That is the new perception.

...

Mr RITCHIE—That might be the perception, but that is certainly overstating our position. Most of the concerns we have are in the area of infrastructure and national competition policy.....

Senator McGAURAN—I think we can say it is a new NFF, after that. That is just my observation, and perhaps it is for the better.

Mr RITCHIE—I think so. It is rare that organisations admit their mistakes, but I think we are prepared to say that we might have missed the boat a little bit on what is happening and what is likely to happen on infrastructure provision.

4.22 The Committee believes that more needs to be done and certainly a different approach should be adopted in encouraging the wider public debate and understanding of NCP. In giving evidence about the level of knowledge and understanding that exists amongst government bodies the NCC stated:

It is not satisfactory, but increasing. At national competition policy units around the states, there is a high level of understanding and a high level of interaction between the NCC and those units concerned. As you move outside those units-and they are the units that are responsible for ensuring the State governments in their various departmental levels implement the policy-there is a dissipation of knowledge. In some areas outside those units there will be very little knowledge and very little interest. In some areas there will be not only a disinterest but almost a wish that it would all go away because it changes the status quo.¹⁰

4.23 In commenting on the level of understanding held in the community, the Western Australian Municipal Association noted:

Public perception can often be the enemy of successful policy making. Policies cannot be made in isolation. Resources need to be invested both in facilitating community understanding of why the policies are put in place and how the benefits will manifest themselves. For many in our communities, especially in regional Australia, the why and how remain a mystery. ..The continuing decline of service to the bush has only increased public resistance to change.¹¹

4.24 On the matter of community education the Public Interest Advocacy Centres had this to say in their submission:

We have now passed the half-way point of NCP implementation. To date, there has been virtually no public education campaign on NCP provided by either the national or NSW Governments. We make a distinction between community education and government advocacy of policies. What we have experienced bears the hallmarks of advocacy rather than education.¹²

4.25 The Shire of York supports the general concern over the need for education:

.....most of us are quite confused about national competition policy in the bush. We get glossy pamphlets and we get people releasing information from the city which tells us that national competition policy is here and how we should implement it. We go to seminars on it when we can. But there is nobody actually actively helping us to deal with national competition policy, to put things into perspective, to take the benefits from it or to address the

10 Mr G Samuel, President, NCC, Committee Hansard, Friday 26 March 1999, p37-38.

11 Mr I Mickel, Vice President, Western Australia Municipal Association, Committee Hansard, Perth, Monday 17 May 1999, p 351.

12 Public Interest Advocacy Centre, Submission No 160A, 29 April 1999, p 3.

shortcomings of it as they affect rural Australia. We feel confused about it and many of my colleagues have probably adopted the view that it is just too hard and hope it will go away in due course.¹³

4.26 The Committee is concerned that the educational efforts of the NCC appear to be failing, but it is pleased to note that the NCC concurs with the ongoing need for education and public information. In the 1998/99 Annual Report the NCC states that:

The Council's second broad goal is to help the community to become better attuned to the scope and potential outcomes of competition reform, including how NCP helps achieve Australia's long term economic and social objectives. The Council will pursue this over the coming year through a community information program.¹⁴

4.27 The Committee retains its view that the administration of the policy is in need of a 'healthy dose of sunlight' – an illumination of the facts from the fallacy for the people who are actually implementing the policy and who are directly affected by it. It is time for the NCC and senior state and territory officials to take up the challenge of improving the knowledge of grass roots managers of the policy, political representatives, and the general public. This will require more than simply 'educating from the podium' as a disinterested policy advocate. Greater knowledge of the policy will also ensure that NCP cannot be used as a scapegoat for administrators and others who seek to deflect blame for the negative impacts of their own policy agendas.

4.28 The Committee endorses the initiative of the Queensland Treasury by releasing a guideline on the public benefit test, "Public Benefit Test Guidelines Approach to undertaking Public Benefit Test Assessments for Legislation Reviews under National Competition Policy." As noted by Mr Samuel,¹⁵ the problem of public education is complex and the book provides an interesting and helpful coverage of a range of issues.¹⁶

Indeed, most of the evidence that appears to be coming forward at the moment is directed much more towards public education. Public education is not just simply talking to the masses and saying, 'You have never had it so good and it is going to be better still next year.' It is rather a fact of educating all those involved with the administration of this policy as to how it should be administered properly and fairly, and with educating those who are the beneficiaries of the policy, as to what it is all about and where it might be heading. It is not an easy task.¹⁷

13 Mr E Fisher, Chief Executive Officer, Shire of York, Committee Hansard, Perth, Tuesday 18 May 1999, p 446-447.

14 NCC 1998/99 Annual Report p31

15 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 847.

16 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 845.

17 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 845.

4.29 The Senate Committee is aware that in NSW, the NSW Local Government and Shires Associations, with funding under the Local Government Development Program, have developed an electronic information exchange to record and link information relating to benchmarking and best practice relevant to local government. The information exchange is known as "Towards Best Practice" and is an interactive Internet web site accessible to all Australian Councils. Through the efforts of the NSW Association and the national body, the Internet site is soon to be a national resource. The Committee considers that this is an admirable step in the right direction in bringing valuable information to local government throughout Australia. The site includes information about best practice projects in the areas of competition policy, computer systems, financial management, governance, public relations etc.

4.30 Complementing such programs, the Committee recommends a more extensive educational program that is wide ranging in both content and coverage of those affected by the NCP.

Recommendation

2. *That the NCC publish a detailed explanation of the public interest test and how it can be applied and produces a listing of case histories where the public interest test has been applied as a regularly updated service of decisions. This may form part of the information available through the proposed 'one-stop-shop' advisory service.*

Need for consultation

4.31 The need for consultation occurs at two levels. First, the Public Interest Advocacy Centre has criticised the lack of formal consultative arrangements within the NCC. The Centre believes that the NCC has:

...failed to meet its stated commitment to broad consultation and how it adopts what is essentially a 'complaints driven' approach to problems which may be experienced with NCP implementation. It is also likely that it is the superior attitude adopted by the NCC to criticism of NCP implementation, or of itself, which provokes the sorts of criticisms which the NCC is on record as resenting.¹⁸

4.32 This would accord with the views of many local government and agricultural bodies, which have indicated that not only are the consultation processes of the NCC inconsistent but so are those of states agencies responsible for reviewing legislation. It appears that not all interested parties are being informed of the existence or progress of these legislative reviews, nor being encouraged to actively participate. It is difficult for the Committee to gauge the accuracy of such comments, but there is obviously some problem.

18 Public Interest Advocacy Centre, Submission No 160A, 29 April 1999, p 3.

4.33 The Committee has been advised that significant consultation occurs with governments and others, but that much of it is in private. Whilst the Committee accepts that advice, it is concerned about the wider public perception of lack of consultation.

4.34 The Committee is not sure that such private consultations do not risk being the equivalent of “deals done in smoke filled rooms” that are anathema of the ACCC. The Committee endorses the initiatives and actions of the NCC to broker outcomes, but is mindful of the desirability for such arrangements to be open to public scrutiny. Such scrutiny is the only way of ensuring “deals” are in the public interest.

Recommendations

3. *That CoAG agree on a standardised public interest test procedure to be used in cases where a review has implications across state or territory borders.*
4. *That the NCC and state and territory agencies with responsibility for implementing NCP, undertake expanded public education programs about the policy and how it is to be implemented.*
5. *That a 'hotline' service be set up for organisations seeking information and assistance on how to use the public interest test and review processes. This service should be reviewed after twelve months operation.*

Predominance of economic interpretation

4.35 Officials charged with responsibility for the application of NCP are overwhelmingly drawn from economic backgrounds. Whilst this provides excellent training for the assessment of the financial or efficiency benefits of NCP there is a gap in the determination of the wider issues that can, should and do, arise under the public interest test.

4.36 This gap is more notable as the responsibility for administering NCP is moved down to lower levels of government. At the Committee’s Round Table in Melbourne, Mr Samuel said that:

As we move further away from the sophistication level of governments, as we move down to lower levels of government and particularly into regional areas where there is less direct contact with central government, whether it is at state or federal level, the degree of sophistication in understanding the public interest test tends to diminish, and that then has been reflected in the way it has been applied. One of the recommendations that you do make that we urge upon governments, and have for some time, is that governments should formulate guidelines as to the application of the public interest test and should assist those that are applying that test in its application.¹⁹

19 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 826.

4.37 The central problem was encapsulated by Mr Waller, a witness appearing before the Committee at the Round Table:

One that I can readily draw to your attention is the question of the value of a culture when you are introducing a new economic system or a new project into a remote area. It is very difficult to actually value the loss of, say, the local culture versus the economic benefit. To some extent that is the debate that is going on around rural and regional Australia at the moment, and it is a very difficult one. So the measurement and analysis of the economic benefits and costs versus this broader social issue is a real methodological problem and, if it is something that the committee could actually help with, then I think it would help improve the quality of the evaluation that is going on at state level, which I think is a fairly new area.²⁰

4.38 The Committee agrees. Further, the Committee is concerned that where this difficulty exists and responsibility for administration/implementation of the NCP has, in all jurisdictions, been placed in Treasury or Premiers portfolios, the officers responsible will 'go for the money' under the tranche payments. For example, in Western Australia, the Treasury has responsibility and the Regional Development portfolio has a role in NCP but Mr Morgan of the Regional Development Council said in response to Senator Margetts' query about implementation:

My view is that the state Treasury is probably like all Treasuries around Australia. It tries to maximise its income and it takes as little notice of the social impacts of its policy as possible.

4.39 Mr Morgan went on to say that:

I think the reviews have mainly concentrated on the financial aspects of changes in policy and take no account of the social impacts of some of those policies.²¹

4.40 It is increasingly recognised that the predominantly economic input must be complimented by a multi-disciplinary approach in order to maximise the value of the implementation of NCP. This is particularly important when applying the public interest test. The issue is how the wider public interest requirements of NCP can be balanced against the efficiency benefits that are recognised to be starting to flow from NCP.

4.41 The Committee is concerned to note the response of the Western Australian Government when asked by Dr Frank Harman of Murdoch University if they were a buyer of AlintaGas would they be willing to pay a premium for both a set of sale contracts and the pipeline, over and above the price for the separate sale of those assets.

20 Mr M Waller, Committee Hansard, 1 November 1999, p 840.

21 Mr S Morgan, Chairman, Regional Development Council (Western Australia), Committee Hansard, 17 May 1999, p 319.

You might be right, Frank. That is one of the issues we will look at. If there is a premium, I am inclined to grab it for the taxpayer or for the state rather than allow it to be dispersed elsewhere. I do not believe it is a major issue.²²

Lack of transparency of Legislative Reviews

4.42 The Committee's attention has been drawn to the Productivity Commission's concerns expressed in its recent report,²³ that:

It is it proper that Impact of Competition Policy Reforms on this role [NCP resting with State Treasuries and Premiers Departments] rest with the coordinating agencies of Government which have an overarching State-wide (or economy wide) view which accounts for the interests of producers, users and consumers. This does not preclude participation of agencies with a 'client-orientated' focus – independent review panels can be, and are, drawn from outside of central agencies. A transparent review process, taking submissions from all interested parties, should adopt a 'multi-disciplinary' approach.

4.43 The Committee would agree with this general position if, indeed, the system worked in such an ideal way.

4.44 The Committee has received evidence that the legislative reviews undertaken by States Government are not always being done in a transparent manner; that is, conducted in an open public manner with the views of all interested parties taken into consideration. The NCC's views on this are clear – Mr Samuel has informed the Committee that a requirement under NCP is for transparency in the review process.

4.45 Notwithstanding the requirement for an open review process, the Committee has heard many complaints that the process is not transparent. For example, Mr Hamilton of the Queensland Chicken Growers Association informed the Committee that the review of his industry was undertaken in a closed way:

... In our submission we did comment that the final report of the Queensland review committee had not been released. That is now no longer the case. That report is available. We were sent a copy I think in late January this year. It was the first time we actually saw the document between two covers. Notwithstanding that, it had been completed and submitted to the minister 12 months earlier. As an association with the substantive submission to the review committee, I guess our noses were a bit out of joint in not having received something sooner.

... That material was all reviewed by an independent person. His comments and recommendations went to cabinet and it was subsequent to that that the

22 Hon. Colin Barnett, Australian Institute of Energy Luncheon; 26 March 1999, p. 18.

23 Productivity Commission Impact of Competition Policy Reforms on Rural and Regional Australia, page 325.

final report was released. We have not seen the full text of that independent person's submissions to cabinet.

...

Overall, I think we were justified in complaining about what had not been included or the inadequacies of the report and the work which had been done.²⁴

4.46 The NCC is also aware of the problems with reviews, as explained by Mr Samuel:

We are aware that some reviews have been criticised for lack of independence, lack of transparency and lack of consultation with all relevant stakeholders. As a result there has been concern about the outcomes of reviews.²⁵

4.47 The concern over the way the reviews can be undertaken is demonstrated by the Queensland Farmers' Federation comments on the decision making environment:

Discussions indicate that other factors are operating which are not conducive to balanced decision making.

The first of these is an overt and at times aggressive attitude by Government representatives in relation to the primacy of efficiency gains. At times this approach could be described as economic "zealotry" which at times has not been well grounded in the complex and subtle framework of applied economics. It appears to be ideologically driven and somewhat divorced from a genuine search for balanced economic reform.

The second factor which we believe has distorted the decision making environment is the enormous influence which the NCP payments play. State Treasuries appear to be more influenced by what their agencies might derive from these monies than by a balanced consideration of all the facts and all the impacts of undertaking reforms.²⁶

Recommendations

6. *That all reviews be undertaken in a fully transparent way with opportunity for contribution from the public at all stages.*

7. *That review panels be required to actively seek out contributions from all interested groups and represent the range of views in the report to government.*

24 Mr C Hamilton, Executive Officer, Queensland Chicken Growers Association, Committee Hansard 8 April 1999, p 244.

25 Mr G Samuel, President, NCC, Committee Hansard, 26 March 1999, p 22.

26 Queensland Farmers Federation, Submission No 68, p3

8. *That all reports of reviews be made public at least thirty days before the government is to consider the review.*

Community Service Obligations

4.48 An important aspect of NCP is the ability of Governments to recognise and address Community Service Obligations (CSOs).

4.49 Historically, many goods and services have been supplied to people in Australia on a cross-subsidised basis rather than a full cost recovery or cost reflective basis. These include water, sewerage, electricity, gas, roads etc. The system of cross-subsidisation in each industry has arisen through some governments' commitment to equality of access and commitment to development. The high costs of the construction of infrastructure to support these industries has necessitated government pricing and supply policies which support these objectives.

4.50 Cross-subsidisation has taken a number of forms, including, from commercial or industrial users to domestic users; from wealthy to disadvantaged consumers; between population generations, (viz from the working age population to pensioners), from cities to rural, regional and remote areas. The 'public interest test' raises the issue of broad social goals and the concept of Community Service Obligations. The Productivity Commission (Industry Commission) estimated Australia's expenditure on community service obligations to be in excess of \$3 billion.²⁷

4.51 The Competition Principles Agreement obligates governments to address the issue of community service obligations but does not define them. While it encourages 'transparency' of operation, NCP leaves the responsibility to each individual government to determine definitions and construct. Consequently, each State and Territory has different models of operation and implementation of CSOs.

4.52 One of the problems with CSOs is the need for exhaustive definition of them to be undertaken to facilitate a seamless transition to corporate or private supply. This is difficult to achieve where these services have not been previously provided as part of a distinct program. Further, the service may be intermeshed with other services, and the removal or downgrading of one may collapse others. For example, the post office or local chemist is often a focal point for small rural towns. The closure of these often causes a flow-on of closures of other businesses as people are forced to other centres for the original services.

4.53 There is concern that community service obligations are at risk when governments commercialise, privatise or contract-out such services. This need not be so, as Mr Samuel commented:

National competition policy does not prohibit community service obligations. Indeed, in our various annual reports and documents we have

27 Industry Commission, February 1997, Community Service Obligations: Policies and Practices of Australian Governments, Information paper, Canberra, AGPS, p20.

encouraged, urged and exhorted governments to address issues of community service obligations. It does not prohibit universal service obligations. It does not prohibit the provision of proper services of health, education, telecommunications, water, power, transport or housing to all sections of the community such as they may be entitled to in a properly constructed, fair Australia. The failure of governments to address those issues is not an issue of national competition policy; it is a failure or dereliction of national social policy.²⁸

4.54 In the Committee's view recognition of the ability of NCP to coexist with CSOs provides the response to the concerns expressed by Mr Ritchie of the NFF:

We at NFF are saying: why are we throwing out the principle of beneficiary pays and making it user pays? Another example is what is going to happen to the cost of electricity distribution to any inland town at the moment. The new system dictates that they pay the full cost of the transmission of electricity along those wires. So almost immediately we are going to add a new cost onto rural and regional Australia that will not be apparent for anybody in metropolitan Australia. These are the dangers we see in user pays pricing principles. Only two consequences can come from it: underprovision of infrastructure or an increase in the price of infrastructure. Logically, nothing else can happen.²⁹

4.55 The Committee sees value in CSOs being kept under review to monitor their continued need and ensure the most effective method of delivery is being used.

Recommendation

9. *That CSO commitments be publicly acknowledged, monitored, and regularly reported on.*

4.56 In reviewing the overall structure of the application of NCP, the Committee noted the lack of any formal appeal mechanism against the findings of a legislative review where public interest is claimed. There are a number of ways of addressing this shortcoming in the administration of the policy and the Committee would see this as a matter for consideration by CoAG.

Inconsistent interpretation of public interest test between the States and Territories

4.57 The Committee is concerned that the disparate administration of NCP may lead to different interpretations of the policy and differing applications of the public interest test. The Committee accepts that the NCC has sought to educate the widely dispersed administrators of NCP but, clearly, the education has not worked as well as intended. The NCC itself recognises this and is taking further steps to correct it.

28 Mr G Samuel, President, NCC, Committee Hansard, I November 1999, p 879

29 Mr T Ritchie, Director Economic Policy, National Farmers Federation Committee Hansard, I November 1999, p 917

4.58 The views of parties in submissions and in hearings, is, that at the level where NCP is applied, the people who have had to comply have been given little, or no advice, on what NCP is and how to go about applying it. Worse, there are suggestions that the lack of knowledge is allowing some people and agencies to prosecute personal or political agendas in the name of NCP. In the Committee's view this is occurring in relation to compulsory competitive tendering. This practice has been introduced in the guise of NCP and is widely understood to be a part of NCP.

4.59 The outcome of such action is that NCP is brought into disrepute and the potential benefits of the policy are then jeopardised.

4.60 As noted above, in the Committee's view, the educative role of the NCC and the State and Territories agencies responsible for administering NCP, needs to be refocussed. Improved education is required not only for those administering NCP at the national and states level but also for those who have to comply; for example local governments. The Productivity Commission has suggested that governments need to provide case studies to assist future reviews as part of a package of proposals to try to explain how the public interest test works.

4.61 The Committee endorses the view of Mr Samuel that all reviews implemented under NCP, whether by the NCC, Commonwealth, States or Territories Governments, should be done in an equally open and transparent way with the opportunity for input from interested parties. The Committee also endorses the Productivity Commission's recommendation that the NCC no longer be required to carry out legislative reviews.

Recommendations

10. *That the NCC no longer be required to carry out legislative reviews; and that Governments, through CoAG, undertake to agree broad systems and processes for reviews, including mechanisms for proper consideration of the submissions and views of any interested parties, in the formulation of the initial recommendations.*
11. *That other governments be provided the opportunity for input to each other's reviews as a way to contribute to impartial outcomes based on a national rather than state or regional perspective.*

CHAPTER 5

SOCIO ECONOMIC CONSEQUENCES OF NATIONAL COMPETITION POLICY

“market forces are global, but the social fallout that policy makers have to manage are local”¹

Introduction

5.1 Rural and regional Australia is continuing to change in line with wider economic and social currents. Urban concentration has been challenged throughout history by specific infrastructure investment (eg. The Snowy Mountains Scheme), by the emergence of agricultural industry and the discovery of various mineral deposits.

5.2 Townships which developed as supply depots and service centres for agricultural and mining areas have waxed and waned in tandem with the domestic and international competitiveness of the industries they served. Changing circumstances in agricultural commodity values combined with infrastructure development is causing significant population movement. Development of financial markets is seeing pressure on investment performance and movement of capital ownership to the cities. These changes are not confined to agricultural-based towns - Whyalla, Port Augusta and Newcastle and Wollongong are examples of manufacturing and heavy industry based towns facing significant structural change. As transport, communications and roads improve over time, the smaller depot towns are disappearing in favour of larger rural centres supported by financial and economic infrastructure such as banks, hospitals, schools, rail stations, government departments etc. These townships have continued despite the changing fortunes of agricultural, mining and manufacturing products in world markets because of their critical mass of social, economic and other infrastructure.

5.3 Further developments and changes in transport and communications and changes in world demand for mining and agricultural products will ensure further evolution in rural and regional areas of Australia. This change may be gradual but it will be inevitable. The challenge for policy makers is to recognise the potential for changes to occur and to ensure that all members of the community are prepared for them, adapt to them, and prosper.

1 Western Australian Parliamentary Standing Committee on Uniform Legislation and Intergovernmental Agreements, Competition Policy and Reforms in the Public Utility Sector, Twenty-Fourth Report, Legislative Assembly, Perth, 1999, p xvii

5.4 Where governments once strove to support and protect rural communities from the adjustment shocks of global trends, governments in the eighties and nineties reduced subsidy and tariff support and assessed regulations which provided a competitive advantage to those industries. Governments have also commenced a drive to address the cost of the provision of infrastructure such as water services through user-pays systems - all with the aim of ensuring an open, internationally competitive economy cognisant of the costs of resource use and environmental impact.

Successive Australian governments in the last quarter century, notwithstanding their differences on other aspects of economic policy, have agreed on the need to dismantle the policies of financial regulation and trade protectionism which had previously been distinctive characteristics of the Australian economic policy regime. This is a change in policy stance which has been fuelled by the acceptance of particular economic ideologies stressing the beneficial effects of competitive markets and free trade.²

5.5 National Competition Policy has emerged as a policy in the nineties in an attempt to open areas of the economy to competitive challenge. But NCP is only one of many economic challenges that have emerged in recent years. These changes have had a profound effect on many communities, including many in rural and regional Australia.

5.6 Taken as a whole, these changes have formed a pervasive web of change, which the Committee has found has left rural and regional Australia feeling angry and disenfranchised. Rural communities see themselves as that forgotten part of Australia, contributing a major proportion of wealth to the Australian community without recognition of their hardships. Many of the services metropolitan Australians have come to consider as 'everyday' such as mobile telephones or banking are not as available to people in remote areas.

5.7 The story of the negative impact of micro-economic reform policies is not just a rural and regional one. Whilst the impacts appear more severe in rural areas, the negative impacts are also being felt in larger regional and metropolitan centres. Bank branches are closing in suburban city areas and government departments are centralising their operations, causing even city dwellers to have to travel further for services. People in some suburban areas of the major cities are also suffering very significant effects from structural adjustment. Government departments are increasingly moving to electronic provision of services, eg. Information kiosks without ensuring all the customers are IT proficient.

NCP and its Overall Economic Effect

5.8 The Committee is concerned at the difficulty of ascertaining the positive value of NCP to the economy. The evidence before the Committee clearly demonstrates

2 Frank Stilwell, Globalization and Cities: An Australian Perspective, in *The Review of Radical Political Economics*, Volume 30, Number 4, December 1998, p 146.

significant localised costs, hardships and community uncertainty. The Committee considers it is highly desirable that the Australian community can be told with some certainty what the value of the policy is, but is concerned that to date that has not been able to be done. The Australian community should also be able to be provided with a numerical assessment of the costs of the policy, including but not limited to the social and environmental costs.

5.9 The Committee accepts that NCP, like the earlier tariff reductions for example, and other subsequent micro-economic reform initiatives, have been intended to contribute to a more robust and flexible economy, better able overall to withstand global shocks and perform in the international marketplace.

5.10 The Committee believes that close monitoring of individual initiatives under NCP, as well as the economy as a whole, needs to be undertaken for future policy development.

5.11 The Productivity Commission has, in its recent study, *Impact of Competition Policy Reforms on Rural and Regional Australia*, forecast an overall benefit from the introduction of NCP of a rise in real GDP of 2.5% a year above what it would otherwise be. It found that there were net benefits for Australia as a whole but that to date greater benefits have accrued to larger businesses.

The overall conclusion we reached was that Australia as a whole is likely to benefit from NCP, although there is more variation in the incidence of benefits and costs amongst the regions. **To date, the reforms implemented have provided greater benefits to large businesses and people in metropolitan areas, as intended, because that is where the markets were opened up first--in infrastructure service areas.** {emphasis added}³

5.12 The Senate Committee did not seek to duplicate the work done by the Productivity Commission. However, evidence to the Committee supports the Commission's finding that overall NCP has brought benefits to the community. However, those benefits have not been distributed equitably across the country. It is a significant concern of the Committee that the benefits that flow from NCP were found by the Commission to primarily flow to larger businesses and to those people resident in metropolitan areas (or at least larger provincial areas) whereas the greatest costs appear to be generally borne by smaller businesses and those resident in small towns.

5.13 The representative from Anglicare noted to the Committee, during a discussion about the Productivity Commission's findings in relation to regional benefits from NCP reforms (Map p 303 of Commission's Report - see Appendix 5):

The evaluation.....from the Productivity Commission in terms of its impact on the economic infrastructure is exactly the opposite to the social infrastructure. Where the benefits lie are where there are relatively few

3 Mr Plunkett, Productivity Commission, Committee Hansard, Melbourne, Monday 1 November 1999.

people, and yet where you have picked the red areas is where many of the social problems are highest. It seems to me there is almost the opposite correlation between where the benefits lie and where the perceptions are of social problems in this country. I would have thought that in many of those vast areas of green, people would not have seen their social services improve over the period of national competition policy...

5.14 The Commission has predicted from its modelling exercise that there would be quite varied results across regions with the greatest variations in impact occurring in country areas. However, the Commission also predicted greater overall benefit to country areas. This finding is what is at odds with the views of the report from Anglicare. The Committee doubts that the benefits of NCP will ever be able to be satisfactorily measured. The Commissions' attempts are praiseworthy but they are estimates subject to variation. What the Committee is concerned to ensure, is that the impacts of the policy are monitored in a rigorous fashion and the results of such monitoring are reported to policy-making authorities.

Impact on Employment and Working Conditions

5.15 Social commentators have noted that the changes are contributing to higher levels of insecurity in the community.

Structural change has also left a growing group of so-called 'battlers' in comparatively low-paid jobs, poorly organised and reliant on a relatively stagnant minimum award wage structure. As these people slip behind the rest of the population (including fellow workers able to benefit from enterprise bargaining), they feel insecure and as bitter and resentful of people on welfare as they are of the 'tall poppies'....⁴

5.16 There is evidence to suggest that the significant losers with respect to NCP implementation and other microeconomic reform measures are employees.⁵ The following issues have been raised:

- high levels of retrenchment resulting in significant short and medium term unemployment;
- changes in working conditions, particularly affecting women and non-English speaking peoples;
- movement from full time to part-time, temporary and contract work;
- structural unemployment not addressed by retraining programs;
- poverty traps and increasing welfare dependency;

4 Mr Fred Argy, Australia at the Crossroads, Radical free market or a progressive liberalism? Allen & Unwin, Sydney, 1998, p 220-221.

5 See Productivity Commission, Impact of Competition Policy Reforms on Rural and Regional Australia, Inquiry Report, No 8, September 1999 and Case Study Latrobe Valley Chapter 4.

- erosion of equal opportunity principles; and
- regional employment disparities.

5.17 Mr Fred Argy points out some of the more ‘subtle’ effects in his book, *Australia at the Crossroads*:

Where costs are being driven down under competition policy, the effects within the community services sector upon the predominantly female labour force is also having another potentially damaging social effect – that of driving down further the earning capacity of an already low-waged sector. As has already been indicated by studies in Australia and in Britain, community service organisations are increasingly opting for part-time, casual and less qualified staff, thus keeping costs to a minimum in order to win contracts and stay in business. Australian research shows that contracting out does lead to fewer staff being employed by service organisations. On the face of it, this may indicate greater efficiency, but it also has the effect of reducing employment opportunities within the sector. In the area of child care, in particular, there is concern that the significant numbers of children being shifted from long day care to family day care, is having the effect of forcing out more qualified long day care staff in favour of cheaper family day care employment.

There have been concerns of long standing about low levels of appropriate training among non-government organisations, and although overall training and skills development remains low, under reforms across the sector in recent years, there has been increasing professionalisation of the work force, and with that, commitment to quality training. There is concern, however, that rather than a commitment to increased training and skills development in the current environment, price-conscious service contracting is leading increasingly to the exclusion of training costs and hence to the de-skilling of service providers. In a sense, this de-skilling is a depreciation of human infrastructure akin to the running down of investment in capital infrastructure, which is ultimately likely to result in a loss in service quality.

...

The impact upon volunteers under contracting out is difficult to determine because there are profound pressures upon voluntarism at the very same time as the nature of service delivery is changing...evidence would seem to suggest the need for sensitivity on the part of organisations recruiting volunteers to ensure they are not exploiting the good nature of women.

There are other potential occasions for the exploitation of vulnerable volunteers, for example service organisations (for example in the Industry Commission Report into Charitable Organisations in Australia). Volunteers enable such organisations to deliver community services on a cheaper basis than government-delivered services. While the industrial relations issue of work substitution has been overlooked to date in favour of this expedient, it

may be set to change as more and more 'for-profit' service providers enter the market and demand a fair basis for competition.⁶

5.18 The recent findings of the Productivity Commission indicate that regional differences in levels of unemployment appear to be deepening as the imbalance in industry employment opportunities change. Whilst not all of these changes are as a result of NCP or indeed micro-economic reform generally, there is potential there for the NCP to worsen the impact of rural downturn, industrial changes, globalisation etc.

5.19 The Committee has received numerous submissions that claim that NCP has been the stated reason for job shedding in local government areas and in a number of industries. The extent to which NCP is the cause of job shedding is not clear. The Committee received evidence that much is attributable to other policies and government practices such as compulsory competitive tendering (CCT), contracting-out and contract amalgamation. In his submission to the Committee Professor Quiggin states:

Unemployment is the most important single violation of the competitive market assumptions. In the standard competitive model, the fact that firms may go bankrupt and employees lose their jobs as a result of the competitive process is not a cause for concern, since it is assumed that workers will immediately find new jobs elsewhere and firms' capital will be transferred into more productive uses. In reality, this is not the case. Workers displaced by competition may experience prolonged periods of unemployment. Although it is often asserted that the losses experienced as a result of higher unemployment will be offset by gains in other sectors of the economy, there is no theoretical basis for the supposition that the two effects will cancel each other out⁷.

5.20 A number of local councils have cited the problem of contracting-out services to the lowest bidder as having a profound effect on employment in the town.

5.21 Where contracts go to larger city companies, which bring their own workers for the duration of the job, local operators must lay-off their workers. Of particular concern in WA, is the growing practice of 'fly-in-fly-out' services, where a large city-based contractor flies in workers to remote areas to fulfil contract work. This work can even extend to relatively unskilled services such as cleaning. These operators are able, due their size, to undercut the local contractors. Their workers, however, do not live in the towns, neither do they spend their wages there, nor send their children to school there or in any way contribute more than temporarily to the economic and social fabric

6 Department of the Parliamentary Library, Information and Research Services, Will Privatisation and Contracting Out Deliver Community Services? Research Paper, No 15, 1997-98, p23-24

7 Professor John Quiggin, Australian Research Council Senior Research Fellow, James Cook University, Submission No 91, 25 September 1998, p15.

of the town.⁸ Another reported impact of CCT is job shifting from public to private sector, often with reduced pay and conditions.

5.22 Workers, particularly those in rural and regional areas, who lose their jobs as a result of National Competition Policy or related micro-economic reforms are not always easily re-employed. Re-employment prospects are significantly affected by mobility and opportunity – in rural Australia there is little opportunity and the degree of mobility is questionable given relocation costs and skill levels. There is certainly a strong degree of criticism in submissions received by the Committee and in the literature discussing the effects of NCP, and in particular, of the estimates of labour force impacts of the implementation of NCP:

It is claimed that the employment effects of the privatisation and corporatisation of electricity services in Victoria have been considerable:

Over the last four to five years 23,000 jobs have been whittled down to less than 7,000. The brain drain and the loss of morale is apparent and the community in the La Trobe Valley has been devastated.⁹

5.23 The Australian community should be informed of the costs of the policy, particularly through clear identification of social change, hardship and environmental costs.

5.24 The Productivity Commission identified job losses by infrastructure providers in its latest report, and justified these losses in terms of improvements in efficiency. The adverse impacts of these employment losses can be compared to the impacts of the early tariff reductions on the manufacturing industries.

To improve efficiency, State governments have sought to address overstaffing in their electricity utilities. This saw total employment in the electricity supply industry decline from slightly more than 80,000 in 1985 to around 37,000 in 1997....much of this decline occurred prior to implementation of the NCP in 1995. However reductions in employment have continued since then....¹⁰

Restructuring and rationalisation of rail enterprises has resulted in railway employment declining more rapidly in country Australia than in capital cities. In 1986, more than half (49,000) of Australia's full-time railway employees were located outside Australia's capital cities, but by 1998 this proportion had declined to around one-third. Over the same period, full-

8 Mr D Palumbo, Committee Hansard, Monday 17 May 1999, Perth, p363-369.

9 Jon Greenaway, At your service, in, Eureka Street, Volume 6 Number 1, p21, January-February 1996, quoting Leigh Hubbard, Trades Hall Secretary.

10 Productivity Commission, Impact of Competition Policy Reforms on Rural and Regional Australia, Inquiry Report, No 8, September 1999, p 108.

time railway employment in capital cities declined from nearly 41,000 to around 23,000.¹¹

5.25 The Commission estimated overall employment in public sector infrastructure utilities declined by about 114,000 people, or 33 per cent, in the decade to 1997. This is a significant figure in any language. While the table below, from the early draft Productivity Commission Report is indicative of these job losses it must be noted that the restructuring in many of these industries predates NCP, but the philosophy of shedding excess labour to achieve efficiency objectives is apparent.

TABLE 10.3 JOB LOSSES BY INFRASTRUCTURE PROVIDERS¹²

Reform sector	Job Losses %	Period/Date	Areas affected
Gas	↓ 42	1992–1997	6 major gas distributors — losses mainly in cities
Electricity	↓ 38	1992–1997	Losses in cities and country regions
Rail	↓ 44	1986–1998	Capital cities
	↓ 73	1986–1998	Other Areas
Telstra	↓ 18	1987-88–1996-97	Telecom and Telstra

5.26 Evidence given to the Committee suggests that some regions are benefiting in terms of employment opportunities from NCP whilst others are not:

One prominent feature of contemporary unemployment which is relatively new is the extent to which it is concentrated in particular depressed regions.....the threat of unemployment is directly linked to where an individual worker lives. Regions like the northern suburbs of Sydney and parts of the eastern suburbs of Melbourne are doing very well, while the LaTrobe Valley, the Iron Triangle, the Illawarra and the western suburbs of Melbourne and Sydney suffer entrenched and chronic unemployment problems, once again reflecting the structural changes in the Australian economy over the last two decades. **The new jobs emerging are usually located well away from the regions where the old jobs are disappearing.**¹³{emphasis added}

5.27 The factors which appear to govern a region's employment prosperity include:

11 Productivity Commission, Impact of Competition Policy Reforms on Rural and Regional Australia, Inquiry Report, No 8, September 1999, p 174.

12 Productivity Commission, Impact of Competition Policy Reforms on Rural and Regional Australia, Draft Report, page 250. SCNPMGTE (1998)

13 Lindsay Tanner, Open Australia, Pluto Press, 1999, p 125.

- degree and type of industry dependence/exposure;
- diversity of industry;
- critical mass of social infrastructure;
- potential capacity to develop industry associated with increasing employment opportunities eg services, communications;
- physical location - Many coastal areas would seem to be more attractive; and
- presence of Government or publicly owned business and infrastructure eg hospitals, schools, post offices, government department centres.

5.28 Given the confluence of these negative factors in rural and regional Australia, the Committee concludes that micro-economic reform, globalisation and NCP, may be having adverse effects on rural and regional Australia, despite the Productivity Commission's finding that in the long-run rural and regional Australia will benefit.

5.29 Consequently, the Committee makes the following recommendations:

Recommendations

12. *That reviews and public interest tests must include Employment and Community Impact Statements.*
13. *That reviews of legislation to consider and report on transitional arrangements, including compensation or retraining. The costs of such and how these arrangements will be implemented should also be outlined and be transparent.*

Impact on Social Welfare

5.30 The Committee chose to examine this issue in two parts:

- firstly, whether or not the 'supply' - provision of social welfare services, health and related services is being affected by the introduction of NCP; and
- secondly, the need for structural adjustment assistance or transitional assistance for those adversely affected by NCP.

Impact on the provision of social welfare services, health and related services

Many people feel that this marketplace stuff has got out of hand. To some extent, in my mind, national competition policy is seen as this marketplace

ideology writ large. We want to see a benefit that has more social value for people in their lives.¹⁴

5.31 It has been suggested that some aspects of NCP and its administration would appear to be in conflict with the principles of good health, community and social welfare service provision. The impact of NCP has been the subject of a number of submissions from the Australian Medical Association Limited, the Australian Doctors' Fund, the Australian Physiotherapy Association, the Australian Dental Association, the Brotherhood of St Laurence, the Australian Association of Social Workers, the Australian Catholic Social Welfare Commission, and others. The concerns are twofold:

- the impacts of contracting-out and competitive tendering on service delivery; and
- imposition of NCP principles on the professional medical and welfare field in terms of the medical workforce, entrance to medical colleges, training, remuneration systems etc.

Competitive tendering and contracting out

5.32 NCP does not require the implementation of competitive tendering or contracting-out. These are methods which each separate jurisdiction has chosen or not chosen to implement in order to bring about competitive neutrality in government business or for other reasons of governance. The NCC and the Productivity Commission have been at pains to bring this message to the community for some time. Unfortunately, the community does not see this as so. Many in the community recognise that although the use of CCT to achieve competitive neutrality is not mandated under NCP, the competitive neutrality requirements of NCP may be met by CCT. It is also apparent that the community considers that it is not acceptable to abrogate responsibility for the implementation of contracting-out and competitive tendering by blaming NCP. Rather, there is a wish that 'someone' takes some responsibility no matter under what auspices the policies are being implemented:

The trouble with the social impact is that it is always someone else's responsibility. We heard it said here again this morning that it is always some other element of policy which should deal with the social impact of these things. We have had similar positions put to us in the whole tax reform debate.....I certainly take Mr O'Connor's point that in Victoria, compulsory competitive tendering and national competition policy are synonymous. It may not be true and it may be a very inaccurate representation, but in our minds they are synonymous.¹⁵

5.33 The concerns relating to contracting-out were not confined to the social welfare and health sectors, but were levelled at many local government services and

14 Mr R Rollason, Anglicare, Committee Hansard, Melbourne, 1 November 1999, p872.

15 Mr R Rollason, Anglicare, Committee Hansard, Melbourne, 1 November 1999, p872.

activities where the impost of contracting-out is most prevalent. Because it is an issue of such importance to the community, the Committee is of the view that the imposition of policies such as competitive tendering and contracting-out, and changes resulting from reviews of legislation, may require a more sophisticated approach, sensitive to the needs of communities and consumers of welfare services. The evidence supports the claim that competitive tendering and contracting-out have sometimes brought benefits, but as with the whole of the implementation of the policy and related reforms, some applications of these policies have been less than beneficial. As far as the Committee is concerned, it sees a need for political decision makers to accept responsibility for the often difficult decisions about who should win and who should lose from a reform, including the extent or need for support for the losers. Senators Murray and Mackay, attempted to encapsulate the issues during questioning at the 1 November 1999 hearing in Melbourne:

Senator Murray - My question is to the participants in the panel. It is to ask them what they make of this analysis by the Productivity Commission-whether they think it has touched the problem of community, particularly country community, reaction against national competition policy and whether it provides an answer. I think both Mr Davis and Mr Nettle quite correctly said that the ball, in terms of where competition policy is to go, is now in political hands because of the reaction we are seeing, politically-voting patterns and support for different kinds of political organisations with different philosophies. If we have to deal with that in terms of our self-interest, if you like, what contribution do you think the Productivity Commission's review makes to that? Right at the heart of the criticism of competition policy are social values, not economic values and yet most of the language used is economic. I would just like to hear your reaction.....

Senator Mackay - I am curious as to the notion of flexibility [in the implementation of NCP using the public interest test] that you [Productivity Commission representatives] talked about. You used the example of local government. That may well be the case in terms of the macro policy, but in terms of the actual implementation it is not, because state jurisdictions are determining how NCP will operate in individual states.....So the flexibility may be inherently there at a macro level, but the actual jurisdictional application of that is disparate, to say the least. I am just wondering whether you looked at that and what comments you have got on it.

Mr Plunkett - What you say is true in that different jurisdictions have interpreted differently how they will meet what they undertook to do. The example was used earlier of compulsive [compulsory] competitive tendering which was seen by the Victorian government as a way of ensuring that significant business activities at local government level operated in a competitively neutral manner. That was not a requirement. [of NCP] The alternative way of meeting that was that the other states identified what they defined as significant business activities and asked the local governments to

then go through exercises to see that, when they competed with private sectors, they operated in a competitively neutral manner.

Another difference you could point to is in roads. The Queensland government and the Northern Territory government have specifically required tendering for roads to be done in small contract lots to facilitate small contractors. The Western Australian government chose to virtually outsource the whole state's road maintenance operation.¹⁶

5.34 The Committee has heard evidence with respect to the delivery of social welfare services in particular, that the paternal policies of providing “choice” of service through contracting-out and competitive tendering is not always compatible with effective or appropriate service provision. Further, the Aboriginal and Torres Strait Islander Commission noted there is a danger that budget cuts to government expenditure will drive successive levels of government to choose the lowest cost delivery service, not the best service:

...though selection on the basis of price competition alone is not a requirement of the NCP and may not be in the long term best interests of the community or overall public interest, a government entity in a climate of budgetary restraint may be persuaded to allocate business primarily on the basis of price, without giving sufficient weight to other public interest considerations.¹⁷

5.35 Indeed, even some of the cost-savings arguments associated with competitive tendering would seem to be unfounded as witnesses have attested to the waste of public funds in the preparation of tenders. Since such funds are sourced originally from Government and from voluntary and charity sources, the management of such funds, in a wasteful way, would be highly inappropriate:

I think the local area seems to be where the problems surface first and, in the old structure, we were able to try and jump on that very quickly. I am not saying that is the answer to everything-there are a lot of bloody awful services out there that should have been defunded-but I do feel that the move to competition as the answer to that is actually causing much more fragmentation. Also, from the ground, it is the most incredible waste of money I have ever seen in my life. Things that could have bought a community bus are now being spent on advertising in the Sydney Morning Herald and on legal processes to make sure that the expression of interest process has got its i's dotted and its t's crossed, whereas before, the local area was asked what it needed and that money was filtered down through that.¹⁸

16 Committee Hansard, Melbourne, 1 November 1999, p 860-861.

17 ATSIIC, Submission No 217, Attachment, p 6.

18 Ms L Margie, Macarthur Home and Community Care Forum, Hansard, Sydney, p 788.

5.36 Witnesses have confirmed that while contracting-out some welfare services have streamlined some practices in the social welfare area, it has made others more cumbersome and administratively inefficient. Valuable personnel resources are being lost, as small organisations are unable to compete with larger more commercially oriented organisations which usually win the contracts. It is considered that this commercial orientation does not necessarily result in good or effective community service and is, it is claimed, leading to loss of co-operation between services:

What we are starting to see, since our funding body, the age and disability department-and I believe it has come through the whole HACC Program-has been introducing an expression of interest process with competitive tendering, is that we are finding people are not sharing their ideas. They are not saying, 'Look, we tried this wonderful new idea at our frail aged day care centre and we are adopting a granny or having pets for therapy. Why don't you try it at yours?' It is kept secret because 'If we have to go for funding again next year, that could be a feather in our cap and we do not want it to be in yours as well.'.....

What we are noticing, as the expression of interest process progresses, is that more small community based organisations are starting to lose out. They are just going to disappear. They do not have the expertise to write flash tenders in the jargon that perhaps somebody sitting on a funding panel may think is appropriate.¹⁹

5.37 The evidence from the hearings and submissions did however, point to benefits from the introduction of competitive tendering and contracting-out. A number of organisations reported positive outcomes from the changes. The following list is illustrative:

- *“While maintaining our principles, we had expanded our services, enhanced our service delivery and strengthened our infrastructure. Importantly, the funds enabled us to establish some really creative services, including service components that received very positive support from the Aboriginal community, that met the needs of families in improved ways and others.*
- *We showed that we could be competitive even against private sector profit-making agencies and other larger, more traditional agencies. Our agency was assessed on merit as being the best agency to provide these services to young homeless and disadvantaged people and their families. I believe that this sent a strong message to other more traditional agencies and private sector providers.*
- *We partnered with a welfare organisation not traditionally seen as part of the youth sector. This partnership has been extremely beneficial in enhancing the level to which clients' needs can be met. We also partnered and collocated with an early intervention health service through the Area Health Service, again with very positive results. However, it should be noted that both of these initiatives would have occurred without an open tender process.*

19 Ms L Margie, Macarthur Home and Community Care Forum, Hansard, Sydney, p 787.

- *We obtained support from many community agencies during the tendering processes. This provided an opportunity to further discuss the impact of competition and tendering in an environment where cooperation was an essential part of achieving successful outcomes.*
- *Our agency forged a very strong link with a number of other traditional agencies that we had previously considered to be competitors or outside the relevant service sphere. By working cooperatively, we were able to enhance all our services, develop improved positive and collaborative relationships and avoided duplication in service delivery. We have sustained these valuable relationships with these agencies.*
- *A number of community agencies got together and decided that they would support the existing service provider and not tender for the service. The agencies made this decision on the grounds that the funding on offer was not new money, and that the existing service had been evaluated and assessed as providing a successful service. In addition, a meeting between a number of interested LGAs agreed to support the existing service and its proposed expansion.*
- *Throughout these tendering processes, a number of agencies and government departments offered practical support to the existing service. This support included offers of collocation, use of a vehicle and provision of data.*
- *Some positives have developed in some funded programs. These include a move to two or three year contracts once funding has been approved, some onerous and unnecessary data collection requirements have been dropped and in one program monthly funding has now improved to a two payment system over the year.”²⁰*

5.38 There appears to be considerable administrative cost shifting from government across to government funded/charity funded, organisations. An unintended consequence of changes to the way social welfare services are funded, would appear to be these additional administrative costs. Further, it is evident that narrow cost/benefit analysis is not capable of examining many of the social factors involved the application of NCP in the social welfare sector. The problems are illustrated below:

“... many Departments maintained a program management style that appeared to us to be both over-zealous and controlling.”²¹

Tender documentation / Financial Viability

The tender documentation for these new projects were at best slightly more onerous than previous submission forms and at worst took several weeks to research and complete to meet the requirements satisfactorily.

Initial problems emerged with the various tender documents, which required quite onerous financial information sometimes going back several years. The agency was in effect asked to

20 Wollongong Youth Accommodation and Support Association, Submission No. 222, p. 4

21 Wollongong Youth Accommodation and Support Association, Submission No. 222, p. 5

prove its financial viability. My view is that 'proving' financial viability in the context of almost total reliance on government funding is one of the most significant issues for our sector in this type of funding system. I believe the continued focus on this element of the process will lead to an inability of Government to fund innovative small providers. The service sector will become dominated by a smaller number of big providers, presumably defeating the purpose of tendering to the community.

Contracts

In regard to the contracts, we encountered a number of problems. The contracts were developed without consultation and seemed to be very one-sided. The terms were such that there was little equality between the two parties and no apparent intention to provide protection for both purchaser and provider. Rather, the contracts appeared to be rigid legal exercises in enhancing the interests of the funding bodies and minimising the interests of the funded agency. For example, in some of the contracts penalties could be applied in cases where the agency was late in returning unspent funds. However, if the Department failed to provide funds on time, the agency had no recourse at all.

Further issues were raised by the fact that contracts were based on a set of required outcomes and in some contracts, agreed numbers of clients to be serviced. If the service failed to meet the determined number of clients or other contracted outcomes, final payments could be reduced. Under this type of arrangement, there is potential for a service to lose any forward-spent funds through financial penalties applied in the late stages of funding, regardless of the reason for not meeting outcomes. Temporary closures due to unforeseen circumstances - such as critical incidents - could easily lead to loss of funding, whether or not the funding had already been spent or committed."

Funding

In some cases, funding administration presented a number of problems to smaller organisations that were not in the position to cover funding gaps. As an example, in one contract, in the first funding round we received three payments. Two were equal amounts, with one being paid on commencement and the other after six months of operation. A final smaller payment was to be provided only after an annual audit was received by the Department. However, terms dictated that the audit had to show how all funds -including the last payment - were spent. The only way we could do this was to borrow the amount of the final payment, spend it and repay the loan after the Department paid the final payment, which was actually some five months after the end of the funded period. Many community agencies would not have the capacity to negotiate such a loan. Another example is four unequal payments, with three being provided during the funded year and one after the audit. However, payments were not made at regular periods, but after a set of specific milestones had been achieved. The cash flow problems of such a system present significant problems for community management.

The insistence that a separate bank account be held by a number of the funding bodies raised the potential for cash flow problems, particularly where payments were provided after the beginning of the funding period. Administrative processes resulted in this often being the case. As an example, in one of the contracts, while a report had to be received by the Department before a cheque could be generated, the format for the report was not sent to agencies in an adequate timeframe prior to the end of a funding period. Agencies were

therefore unable to complete and return the necessary documentation before the commencement of the next period.

Concern with the requirement of a separate bank account was compounded when we learnt that some of the larger welfare agencies had been given exemptions from this requirement.

An additional condition in some of the contracts was that organisations were to begin with a nil balance and end with a nil balance also caused difficulties, not only with the issue of cash flow, but also in making provisions for on going staff accruals if the service was continued.

The development of unit costings was immensely difficult, in that activities such as community development were not considered. In the uncertain funding environment, financial planning and matters relating to service infrastructure were severely impeded.

Project commencement requirements

Stipulations around the commencement of funded projects also created problems. In some cases, the organisations were required to have the project fully operational four weeks after funding was approved - even though approval occurred some time before organisations actually received funding. The short timeframe was clearly unrealistic in regard to ensuring proper equal opportunity employment processes, establishing offices and systems and undertaking initial promotional work. In one case, we were informed by the Department that our delayed starting time would be noted in evaluation, as other agencies seemed to be able to comply. It was of significant concern to us that some agencies may be meeting these sorts of requirements by circumventing good employment and recruitment practices.

Data requirements

Data requirements were the next major cause for concern. Logically, where tenders are awarded on the basis of specified outcomes, management and accountability should be focused on the measurement of outcomes. However, we found that management and accountability were based on the collection of onerous, and in part irrelevant, information. For example, organisations were required to provide a breakdown of staff hours by client and further, by task. Gathering data on the time spent on referral for the client, on assessment of the client and so on is time consuming, not particularly informative at a program level, and totally uninformative about whether stated outcomes are being met. It also confuses the relationship between 'funder' and employer and purchaser and provider. The employer should be responsible for supervision and management of how staff time is spent, and it is at a local service level that this information is helpful. In a purchaser provider relationship, the purchaser need only be concerned about whether the services purchased were produced or provided - not how. The Departments have never been able to adequately respond to questions pertaining to the need for, or use of, this information. It could easily appear that the key interest of the various Departments here was that of control.

A second significant issue in program data relates to the type of information collected. The data required by the Departments was primarily quantitative, and thus provided little measure of the quality of service delivery or client outcomes. In effect, positive outcomes such as stronger and healthier communities, people leaving the service empowered to cope on their own, and the input into social capital and other community development activities have been largely overlooked in data collection and analysis.

Continuation of funding

In some cases, in the second year, services did not just continue. An open tender process was repeated. Again in one case, we were not advised of refunding until three weeks prior to the end of the funding round. Continued operation of the service was therefore very difficult, given the prospects of having to wind-down within a couple of weeks. When we approached one Department about this problem, their response was that they '...were doing it as fast as they could.'

The timing of notification of funding/defunding gave no recognition to the major costs associated with ongoing operational costs, particularly lease payments, rental properties and administrative staff. Nor did the timing give any acknowledgment to employer's legal obligations to staff regarding termination and other related matters. As funds are provided within annual contracts, the 'funder' does not provide resources for staff redundancies. However, if the employer extends the contract, the employee is considered a permanent employee and redundancy money must be accrued if the agency has fifteen or more employees.

The impact on staff of inadequate time frames for funding notification was significant. No consideration was given to the job uncertainty being faced by project employees. The contracting system generally mitigates against retention of skilled staff and continuity of project operation. Staff are too often forced to start looking for other work three months prior to the end of a contract, in order to ensure their own survival within the system. They experience high levels of stress due to the uncertainty of their job coupled with the pressure to work hard to meet contracted outcomes in order to ensure that final payments are not reduced through penalties. One recent experience has an agency being forced to extend staff's contracts four times – twice for six months, once for five months and once for three months while a Department worked on the development of a new program and then took eleven months to establish the tendering process and then did not make decisions in some areas and extended the timeframe again. The stress of this also impacts on the quality of service that is provided in these circumstances.

Management and the organisation as a whole also experienced unnecessary stress. Management were forced to distribute termination notices while expecting staff to continue business-as-usual, and planning had to be undertaken within the context of not knowing whether the service would continue to exist. There are also financial considerations including the additional cost of leasing arrangements for short periods, commercial rental leases and penalties and other such matters.”²²

5.39 These issues should not be solely placed ‘at the feet’ of National Competition Policy. There are clearly concerns related to administration and the problems associated with contracting-out and competitive tendering. However, having said this, it is the Committee’s view that it is time that responsibility is accepted by governments for the impacts of these various policies.

5.40 Generally, these policies would appear to be working to promote effective competition, but where these policies are being implemented under the umbrella of

22 Wollongong Youth Accommodation and Support Association, Submission No. 222, p. 8.

NCP without full regard to the public interest test, without full transparency of procedures and management, problems are occurring. There is a case for greater guidance and leadership. There is also a need to honestly represent that which is under NCP and that which is not. In Chapter 4, the Committee has discussed its concerns about the administration of the public interest test and recommended action. However, the Committee also considers that the level of concern in the community in relation to the impact of contracting-out and competitive tendering on the Health and Welfare Sector is sufficient to warrant action by jurisdictions to ensure that there are no unintended consequences.

Recommendations

14. *That all reviews of legislation and changes to competitive arrangements in the social welfare sector adhere to the broad principles of the public interest and take account of the difficult to measure social factors rather than relying on narrow, more easily measurable, economic factors. That all contracting out arrangements and competitive tendering processes and documentation in the social welfare sector be public and transparent. There should be a presumption that all documents will be public and any claims of commercial confidentiality should be kept to a minimum and where essential.*
15. *That Governments critically examine competitive tendering processes for social welfare services with a view to ensuring that a sophisticated and flexible approach is taken to the provision of service. The process should consider as part of the public interest test: quality, consistency and continuity of service; the value of local co-operative arrangements and the personal nature of such service.*
16. *That, where appropriate, the Commonwealth Departments of Health and Aged Care and Community Services, examine competitive tendering programs and determine which services are properly and efficiently competitively tendered and which may be contracted out on a benchmark of service basis. Particular attention should be paid to rural and remote communities where locally provided co-operative services may be integral to the success of service delivery.*

Impact on Medical Profession

5.41 The Committee heard from a number of witnesses representing the medical profession in relation to the issue of whether the introduction of NCP principles will be of benefit to the medical profession, particularly in terms of the entry to specialist colleges and training of medical personnel, perceived concerns re third-line forcing in the medical field and the contracting of medical personnel.

5.42 Witnesses attested to the fact that entry to the various colleges and professions is based on merit and limited to the number of training places available. Both representatives of the Australian Association of Surgeons and the Royal Australasian College of Surgeons put to the Committee the view that the supply of specialists is limited, particularly by funding for surgical services, in public hospitals.

5.43 The Royal Australasian College of Surgeons was particularly adamant that the entry systems are not discriminatory:

....we have previously had similar criticism....where the policies of selection into surgical training of the RACS were claimed to be discriminatory. We would like to respond to the inaccuracy of that report.....the RACS over the last decade has followed a policy of planning the entry into surgical training to meet the community needs of an adequate number of surgeons of a high standard of skills and training. There remains a difficulty in the ready access of patients to elective surgery however, this is rationing imposed by the limited funding for surgical services in public hospitals.²³

5.44 The evidence given by representatives of the Australian Association of Surgeons endorsed this view and put forward further concerns about the commercialisation of health services:

I should like to summarise our submission into two concepts: the first is the complicity of services with TPA ramifications and the second is that surgery provides a quality service, not a product. At the end of the day these concepts must sustain the argument for a better outcome for the consumer.

Let me start with the complicity of services. As outlined in our submission, medical training to specialist level takes 11 to 15 years after leaving school. Colleagues give freely of their time on a voluntary basis to educate, train and supervise the trainees. Once out in the competitive work force, colleagues are supportive of each other. Frequently we seek opinions from our colleagues, help each other out with major surgery and cover each other when on leave or night duty. Minimal financial agreements occur with these arrangements. This complicity of services enhances both quality and efficiency. Surgeons ethically find difficulty in complying with a fiercely competitive market.

This brings me to my second point: surgeons provide a quality service, not a marketable product. From trainee programs to the end of a surgeon's working days, quality control must take precedence. Once we treat surgery as a marketable product to be advertised and sold to the consumer at a profit, business ethics compete with clinical decisions. We support the AMWAC work force assessments each three to five years to monitor supply of surgeons as outlined in the submission, but consumer demand is difficult to operate in the economic health care model which has a major free service in the public sector. We do not have a level playing field in medicine.

Contracting in both the private and the public sector is a paradox. Contracting of surgeons will force surgeons' wages down but will exclude others from their place of work and, hence, it is in conflict with TPA proposals where freedom of choice for the consumer is removed.

23 Royal Australasian College of Surgeons, Submission No 218, p 1-2.

Competition policy and social dislocation of the work force as outlined in the submission do not sit well from the consumer benefit's point of view. In relation to collective bargaining and third - line forcing, these have been well presented to the committee by the AMA's submission and the AAS fully supports these arguments.....

Mr Brazenor - I would just like to add that we are concerned that the ACCC seems to display little understanding that turning health services and particularly the delivery of surgical services into a completely free market would hurt the consumer. We believe it would be a greater hazard to patients and we believe there would be a huge rise in discretionary surgery, and that is not in anybody's interests.

5.45 With reference to the issue of discrimination of entry to training colleges, the Australian Association of Surgeons responded with the following:

CHAIR - ...I have an interest in this area, in particular the surgical training schools. I wonder if you could tell us about that. Some of the allegations that were made some months ago now by various people who have come before this committee were that these schools do not necessarily pick the best and the brightest of students, and in fact they use a system where they pick who is known to the system, usually someone whose father or mother - usually father - is already prominent within the different surgical disciplines to train. So we are not necessarily, through the current system, getting the best surgeons to do all the various work they do in this country.

Mr Brazenor - I know of no substantiation for that at all. There was nobody medical in my family at all - I am the first - and I never met that. I competed fiercely for every resident and registrar job I went for. There was nobody backing me except the people that I worked for and it was quite obvious to me that if you did a good job you got picked and if you did not do a good job you were out. In the whole of Victoria I know of only possibly half a dozen people who might have had prominent forebears - fathers or mothers in medicine. I really find it very difficult to credit such a statement and I think it is silly. I must say it sounds awfully like sour grapes.

My experience of the system - and I came through it with nobody to help me - is that the only thing that had a bearing on my selection was whether I did a good job as a resident and whether my trainers thought I was going to hurt people. Right now, as we sit here, in Australia in the training centres of this nation, there are some conversations going on about trainees and these will be mainly, 'Is this man or woman going to hurt people if we let them through the training post, if we let them into an accredited training position, if we let them out the other end?'

You referred to the best and the brightest. How do you quantify that? I topped my medical course. I was first in my year and yet I am the first to say that I do not particularly want to take my kids to a doctor who was first in his year. I think I am an exception, but by and large people who do well academically are not necessarily good doctors. Some of them would not know how to talk to a patient to save the patient's life and some of them are

very bad decision makers. I can remember - this is 10 or 15 years ago when you could dress down somebody who was bloody incompetent without being strung up before a tribunal - roasting a person for seeing one of my patients in the middle of the night and prescribing a tranquilliser to somebody who was actually short of oxygen. This person had been accepted into the training scheme and I told him that if he ever did that again I would see that he was out of the training scheme.

That is the way business is done, and that is the reason why we are very uncomfortable about the ACCC looking at colleges and thinking it is some sort of boys club. It is not.we believe there has to be an independent accrediting body. It pains me to say it but I think the college does it as well as I could conceive of it being done.

5.46 The evidence to the Committee demonstrates that the issues are clearly not straightforward, and the existence of a 'market' for health services is one of contention. The major policy field here is health policy not NCP. Australian health has a system of public and private hospitals and contracted services to public hospitals. Without a major change in Australian health policy to move to a US-style system, the role of NCP is expected to be low. However, the Committee believes that, in the interests of dispelling any fears in the community and ensuring that entry practices are as fair and efficient as possible, the specific reviews of regulation covering the medical profession should proceed with full and open consultation with the medical profession and other interested parties. Further, the Committee considers that jurisdictions should take particular care to ensure that all social and economic consequences are considered in as open and transparent a manner as possible. Broad community consultation should be a feature of all such reviews.

The need for structural adjustment assistance

5.47 A number of submissions support the need for greater structural adjustment assistance and in some cases, compensation where the implementation of NCP has had adverse consequences. The Productivity Commission argues the use of existing programs for support and concluded that governments should rely principally on generally available assistance measures to help people adversely affected by NCP. The Commission tempers this by noting that the effectiveness of such measure should be kept under review.

5.48 This may be in order, however, it seems the Commission has not put forward any evidence to substantiate their claim that current programs are adequate. The anecdotal evidence would suggest there are gaps. The Select Committee considers that the view that those who have lost their job/business/farm must suffer for the good of the whole of the economy is not appropriate and it believes that transitional and compensatory arrangements should be given greater emphasis in reviews and practical application of the policy.

5.49 The evidence from hearings and in submissions supports this approach.

5.50 The Productivity Commission concluded in its earlier Draft Report:

Governments want to ‘do something’ in respect of regional development. They have a range of regional development policies in place, although these are often applied in an ad hoc manner and with limited coordination between the tiers of governments. This has resulted in a somewhat spasmodic approach by government to regional development and created a perception in country Australia that there is a lack of commitment by governments to regional development.²⁴

5.51 Mr Fred Argy also argued before the Committee that there is a role for governments in smoothing the effects of structural reform, as follows:

I am not saying that structural change and micro-economic reform always necessarily produce greater inequality-in the absence of government intervention, that is. But one only needs to look at the US, the UK and New Zealand to see that in fact this is what happens in practice unless you have a government actually out there trying to smooth the effect. Here in Australia we can really say with some pride that we have been able to introduce substantial micro-economic reform without the social trauma that you have had in these other three countries I mentioned, for example. We have been able to achieve a reasonably happy compromise between the two. I suspect this is changing. First of all, the impact of micro reform is becoming more and more severe in terms of its effects. And it is becoming harder, for fiscal and other reasons, to smooth the social effects.

So my view is that if we continue just relentlessly down the US path of more and more economic freedom without doing more to smooth some of its social effects, we run the danger not only of deepening social class divisions and intentions; but, for those who are really concerned about micro reform-as I am and I am sure you all are-there is a serious danger that it will cause a sharp backlash against structural change and economic reform, so in the end you will be throwing out the baby with the bathwater.²⁵

5.52 The Committee received on a number of occasions, evidence of the distribution of the tranche payment monies to affected communities. The distribution varied from State to State. It appears from the evidence that only in Queensland and in part, in Western Australia and Victoria, are funds from the tranche payments being distributed to communities in the form of payments to local governments. Witnesses to the inquiry, consider that the States could contribute further to the implementation of NCP through the increased transfer of funds from the tranche payments. The Committee considers that the issue of the distribution of the tranche funds should be a matter addressed by CoAG in the review of NCP.

24 Productivity Commission, Impact of Competition Policy Reforms on Rural and Regional Australia, Draft Report, Canberra, May 1999, p327.

25 Mr Fred Argy, Committee Hansard, Tuesday, 30 March 1999, p89-90.

Recommendations

17. *That the issue of the distribution of tranche funds should be a matter addressed by CoAG in the review of NCP.*
18. *That all reviews of regulations recommend action in regard to transitional arrangements, development programs, and compensation when proposing change which will negatively impact on communities.*

The Impact on urban, rural and regional communities

For rural development policies to be successful there needs to be a greater focus on people. Perhaps the best way to achieve this is by emphasising the value of social obligations rather than the 'rights' of self-interested individualism. Conventional wisdom stresses the importance of competition rather than community. While the current approach to rural development, at the very least, recognises the importance of rural Australia, successful achievement of its objectives requires a more critical consideration of the dominant neo-liberal approach to policy-making.²⁶

5.53 Amongst administrators of NCP and other micro-economic reform, there would appear to be a presumption that all economic activity in Australia takes place within the context of a perfect national market. This is not the case and the architects of NCP recognised this in the inclusion of the public interest/public benefits tests. Failure to properly apply the public interest test is at the heart of much of the problems with NCP in rural and regional Australia. The Committee's findings in relation to Public Interest are discussed in detail in Chapter 4.

5.54 The interdependence of economic and social activity in rural and regional centres may be accepted as given. That the local doctor, pharmacist, bank, supermarket, stock and station agent and post office are an integral part of the social and economic fabric of what constitutes a small rural town is understood by governments but may not always be considered as significant in the implementation of microeconomic reform policies. The demise of one of these services tends to lead to the demise of the others. Due to a number of economic and social forces a trend to centralisation is apparent. The term 'sponge city' has been coined to describe the growth of some rural centres at the expense of surrounding rural towns, in effect centralising rural populations into these rural centres.

5.55 Professor Quiggin of James Cook University states in his submission:

There has been considerable concern about the effects of National Competition Policy on regional economies, particularly those of country towns in the inland. In evaluating whether this concern is well founded, it is

26 Rural development policy in an era of economic rationalism: Issues and opportunities, Vaughan Higgins in *Studies in Australian Rural Economic Development*, ed Max Staples and Alex Millmow, Centre for Rural Social Research, Charles Sturt University, July 1998, p27.

necessary to take account of the fact that changes in the pattern of population and economic activity are an inevitable consequence of social and technological change. For example, as transport costs have declined, larger country centres have tended to expand at the expense of smaller towns.

It would be a mistake therefore, to suggest that National Competition Policy is the primary cause of the decline of rural towns. Nevertheless, it is arguable that National Competition Policy and other aspects of microeconomic reform have increased the rate of change and made it unnecessarily traumatic.

All communities are socially and economically interdependent. A contraction in one industry leads to lower demand for the suppliers of inputs, while the associated loss of employment reduces the income of retail traders and the viability of schools and other services. Economists can analyse some aspects of this process using methods such as input-output analysis. In the long run, market processes can be expected to respond to technological changes through adjustment to a new, sustainable equilibrium. However, only under very special circumstances will the process of adjustment generated by unfettered market forces be socially optimal. Processes of economic contraction are likely to proceed excessively rapidly as the loss of one area of economic activity imposes external costs on others.

In the past, the existence of stable employers like banks, post offices and so on tended to cushion the impact of adverse economic shocks. These stable activities helped towns faced with a temporary downturn in key industries to ride out the storm, and permitted a more gradual adjustment to permanent changes requiring a contraction in activity. In an increasingly market-oriented economy this stabilising effect is lost. Rather than continuing service after it is unprofitable as a return for past benefits, profit-maximising enterprises withdraw such services immediately. Indeed, the current trend appears to involve the withdrawal of services that are still covering costs, in the expectation that they will become unprofitable in future.

National Competition Policy closes off some routes by which governments have traditionally sought to slow down the rate of adjustment. For example, local governments are effectively prohibited from favouring local contractors, even if the closure of those businesses would lead to contraction in the local economy which would in turn accelerate the withdrawal of banks, schools, post offices and so on.²⁷

5.56 Professor Quiggin's submission, above, does not say what the special circumstances, under which unfettered market forces, will be socially optimal: but it is obvious, that in the small rural centres of Australia, the circumstances befitting perfect competition are most unlikely.

27 Professor John Quiggin, James Cook University, Submission No 91, p 26-27.

5.57 Rather, small rural centres may be better served by a mix of co-operation, co-ordination and competition. The Remote and Isolated Pharmacists Association Australia Inc represents 428 pharmacies in single pharmacy towns across Australia. In its submission, the Association summarises some of the policies that are affecting rural towns as:

- restructuring of Health Services;
- centralisation policies of Government Departments;
- down-grading of corporate services, particularly Banks, Post Offices and Telstra; and
- deregulation of professions.

5.58 The Association goes on to note:

A study of the Health Needs of Small Rural Communities by Roger Strasser et al, identified that these communities most frequently used the following health services, in order of frequency:

Doctor

Pharmacy

Dentist

*Hospital*²⁸

5.59 The Association concludes by recommending, inter alia, that Government Departments and Government-owned corporations be required to publish an economic impact statement prior to any closures in rural communities. All reviews should be 'published'. The entire process should be open, transparent and fully consultative.

5.60 A number of submissions and witnesses made the point that competition does not always produce benefits for the consumer or the region as argued so vigorously by its supporters, and that the public benefits test must be carefully weighed when any change is considered to ensure that benefits do in fact exceed the costs:

There is no question about the importance of competition. But I will just give you an example. As the mayor said, we run the Harry Riggs Regional Airport, a very successful airport in terms of growth. Skywest are providing a good service... If you took the competition issue to its ultimate conclusion, we should, somehow or other...say 'We want to call tenders for the providers of the air service to Albany.' Clearly, there is not the capacity there for two providers, yet, if we did that, it is likely that we would get two providers: Airlink....and....Skywest...In simple terms, they would probably cut one another's throats to get in there. I believe you would see

exactly a repeat of what has happened in Port Hedland recently. Sooner or later, one of them would have to pull out. Then the whole topsy-turvy would start, people would not have any choice any longer, and so on.

Competition is not just a simple thing so that you should say ‘Always there should be competition.’ If you were talking about fast food outlets in Albany, I would be the first person to say there should be competition. We are talking about a discount department store in Albany, for example. They have given planning approval to a particular consortium to build one. I think their anchor tenant is going to be Target. Now you would say, ‘Competition should have it that we should get a K-mart here.’ You do not have to be a Rhodes scholar to say that you do not think the population of Albany and the region would support two discount department stores. Yet if you opened it up, and if it was a perfect world, you would say that you should give planning approval for two. Probably in the end both of them would go broke.²⁹

5.61 The anecdotal evidence given in submissions and during the hearings is supported by the empirical evidence in the Productivity Commission’s latest study and by work by the Strategic Liaison Committee, Queensland Departments of Transport and Main Roads. In giving evidence to the Committee, Prof Arthur Brownlea, Chair, Strategic Liaison Committee, Queensland Departments of Transport and Main Roads stated:

I think there is anger out there. And some have gone past anger to fatalism, that nothing is going to happen anyway, that in some senses perhaps metropolitan Australians do not care much about the bush. There is a sense that rural communities are losing membership of the broad Australian society and that perhaps government has left the negotiating table.³⁰

5.62 In its capacity as adviser to the Queensland Departments of Transport and Main Roads, the Strategic Liaison Committee, held community meetings in five different communities of different sizes across Queensland to assess aspects of the Departments strategic plans. The Strategic Liaison Committee produced a report titled, *Issues in rural social justice and transport*.

5.63 In giving evidence to the Committee, Professor Brownlea was asked to give what he saw as the profile of a rural community that is ‘bleeding’. His reply gives a construct to what seems to be an Australia-wide phenomenon:

It would have a population of almost 1,000, and it would not be far west and not be easily accessible to Brisbane. It would have had to fight to retain the top of the school-the years 11 and 12-but would be likely to lose that after a long fight. It would have invested in a hospital, an ambulance and a doctor’s

29 Mr E Kelly, Chief Executive Officer, City of Albany, Committee Hansard, Tuesday 18 May 1999, Albany, p 492-493.

30 Professor A A Brownlea, Chair, Strategic Liaison Committee, Queensland Departments of Transport and Main Roads, Committee Hansard, Wednesday 7 April 1999, Brisbane, p157.

residence. It would have attracted a doctor but been unable to retain it. It would have lost the pharmacy and would be losing banking facilities, but there are alternatives—a couple of mornings a week type model. There would be a loss of key families, key families that make the difference between whether or not there is a football team and whether or not there is somebody to chair the P&C. That is the social capital attrition that is taking place. But the community would be large enough to dispute its future.

....

The things that I have learned from the five studies we have done so far...is that somewhere in the middle are the groups that hurt most. Those that are very small, with a population of 100 or less, nothing is going to hurt them any more. They are right down to the bare basics. They have accepted that, they live with it and they make do. While they see national competition policy happening, in a sense, that is not going to change much for them. It is those middle communities – not the ones that are so small that the psychology and the opportunity framework has changed or so large that they have got resilience up here—that are neither one thing nor the other.³¹

5.64 All local government submissions point to the same raft of factors which challenge the social fabric of rural and regional communities. The WA Municipal Association's submission is representative:

The quality of and disruption to telephone service remain high on the list of community concern. When phone lines are down on remote farms, a family's link with the outside world is virtually cut off due to lack of mobile access and few public telephones. People in rural and remote areas have, through gradual loss of banking and other services, been forced to use facilities such as telephone banking to manage their bank accounts, pay bills, order supplies and meet other business requirements. When the phone access is lost, restoration of services should be a priority for Telstra. Yet I have personally received numerous complaints from families putting up with delayed service delivery and little support from Telstra. Out in the bush, we are simply not profitable enough to warrant greater attention.

It is the same with public telephone boxes. Recently, a small town near Esperance lost its only phone box due to lack of profit and inconvenience to service. Telstra's response to the community outcry was to offer to put a phone card into the local hotel, with the hotel renting the line on the community's behalf. The reasoning behind it was that the phone box had to show a profit; it had to be viable.

With the other utilities it is no different. The Shire of Gnowangerup recently went into bat for a growing company producing fencing wire in its community. The organisation in question was successfully established and was in the process of expanding to meet demands and reduce its costs. As

31 Professor A A Brownlea, Chair, Strategic Liaison Committee, Queensland Departments of Transport and Main Roads, Committee Hansard, Wednesday, 7 April, Brisbane, p 159 & 165.

part of this process, the organisation wished to install a new welder but was told by Western Power that an upgrade to the power supply costing hundreds of thousands of dollars was required, to be paid by that organisation. Obviously, the organisation does not have the resources to meet this obligation, leaving the shire concerned that the whole organisation will simply relocate to a more convenient location. The gradual move away from cross-subsidisation of essential community infrastructure and services by corporatised and privatised entities has left our rural and remote areas isolated and feeling very victimised.³²

5.65 Evidence from the Latrobe Shire Council provides a useful view of the impact of changes in that area.

Latrobe Area³³

In terms of national competition policy, Latrobe Shire Council is not necessarily typical of all rural councils. We are the third largest municipality in Victoria outside Melbourne and Geelong and are, in effect, the regional capital of Gippsland in terms of population, administration, employment, education and recreation. We are a bit like Ballarat or Bendigo, very similar in population; we just look different. That means our experience has been somewhat different in our effect on internal council activities.

Almost certainly we are the most dramatic but until recently little recognised example of national competition policy at work in terms of our regional economy. We also want to put on notice that we do not believe that our community fits the normal pattern of an irrevocably declining region. In other words, the economic difficulties we have had we believe are due to particular circumstances. If the policy settings are right, we believe that our community actually has the capacity for renewed growth with an environment of national competition policy.

As I said a moment ago, we have suffered a dramatic turnaround due to restructuring, not all driven by national competition policy specifically but certainly driven by the processes of restructuring. The Latrobe Valley grew very rapidly after 1945. As an example of that, the town I live in had a population of a few hundred in 1945. It now has a population of around 17,000, extremely rapid growth. However, over the last decade we have suffered from a succession of major public sector investment and general rationalisation of activities, which has happened throughout rural Australia. The Eastern Energy example I mentioned is typical of that. Eastern Energy has taken customer and billing staff from Traralgon, centralising them in Melbourne, with the loss of 35 jobs. That sort of thing has been going on throughout rural Australia and is still going on.

The really big effect has been the rationalisation and privatisation of the electricity generation industry. Over 6,000 direct jobs were lost in the power industry in around a decade, which

32 Western Australia Municipal Association, Mr I Mickel, Vice President, Western Australia Municipal Association, Committee Hansard, Monday 17 May, 1999, Perth, p 351.

33 Mr A Stephens, Latrobe Shire Council, Committee Hansard, Friday, 16 July 1999, p 519-523.

equates to roughly 10 per cent of our total population and a loss of something like 18,000 jobs overall. In a community of around 70,000 people, that is an extraordinary level of job loss.

The rationalisation and privatisation of the electricity industry offers a dramatic example of national competition policy in operation. Our local community believed that the government virtually changed the rules with severe disruption to people's lives and expectations. Over a number of years we had been led to believe that there would be continuing expansion in the electricity industry. There was a report released by the State Electricity Commission a couple of decades ago predicting the construction of 21 power stations. That now appears laughable. Nevertheless, a whole system of infrastructure growth was built up around that. There is excess water supply and there is an excess supply of roads, housing and what have you built around an expectation of growth. Generations of people had expected to receive secure employment and there was a whole system of tertiary training built around that. Then virtually overnight that all changed.

This resulted in a great loss of local skills and engineering resources. One finds former Latrobe Valley engineering people, for example, working all over the world. You will run into them in the most unexpected places. There are ex-SEC people working in Greece and in South-East Asia. The skills base that had been built up over half a century has been dispersed to a certain extent. We still have some of it, but a lot of it had to move.

Also, there was a virtual cessation of training programs that were conducted under the State Electricity Commission. This means that the privatised electricity companies are, in effect, running down the human capital base. They are aware of that, but it is much more difficult for half a dozen privately owned generators to mount a major training program than it was for a single unit entity. Individual generating companies do not necessarily have any commitment to making themselves a local emergency response capability. It is not impossible to believe that, if a Longford gas crisis type eventuality occurred in the electricity industry, we are probably not as well suited as we were once to cope with that.

However, as I said a moment ago, we do not necessarily fit into the pattern of high change and low growth, for example, as was identified in the recently released Productivity Commission draft report on competition policy. It identified large parts of Australia as 'high change' and 'low growth', and you could not see terribly many promising signs that that was going to change. We believe that, in theory, the Latrobe Valley has a lot of assets that are positive. We lie in the overall coastal zone of Australia. We are close to Melbourne. We have considerable existing local critical mass in population and infrastructure, excellent comparative advantages and an ability to sustain, or at least support, a larger population and industry base.

We believe the reasons for low growth are fairly specific, and they are the major industry restructuring without a proactive adjustment program, which we have described. I think the latter point is important. The restructuring process in our area was primarily driven by government and therefore, in theory, it would have been possible proactively to put in place

measures to address that. By and large, that did not happen. We also believe there are some long-term structural issues in the Gippsland region which are important for the whole region.

The Gippsland region is relatively isolated, and in fact the Gippsland region and south-east New South Wales have come together to form a south-east Australia transport strategy group, which is working together to change the reality to the point where Gippsland and south-east New South Wales, Eden-Monaro and so on are seen as a major corridor rather than two isolated ends of their relative state administrations. We believe that there is a lack of critical population and infrastructure mass outside the Latrobe Valley, and that results in a lack of economic and political leverage. Therefore, we believe that national competition policy must be balanced by the long-term pursuit of national goals. There will be cases where infrastructure may be required ahead of time for regional development purposes. We believe that Australia can, and must, recommence an active population growth program, as far as possible targeted towards regional areas. For example, our region has excellent resources, soils, climate and environment pertaining to only 250,000 people. The entire Gippsland region has a population smaller than the city of Canberra. We believe that it would function much better economically with about four times that level. The achievement of goals like that requires, we believe, a managerial approach to government and pursuing long-term objectives in a consistent manner.

Looking to the future, we would recommend two approaches: first, where appropriate, a more managerial or interventionist approach in cases where reliance on the market at local level may deliver perverse outcomes for the community and, second, in certain circumstances, actually follow through of national competition policy in cases where it is likely to deliver appropriate outcomes.

Picking up the latter point, we believe in certain respects national competition policy has not necessarily been fully applied to the electricity industry. Transmission pricing is still on a postage stamp basis, which distorts market signals by smoothing out the economic and environmental costs of transporting electricity from power stations to terminals. These costs are very great. Apart from capital and maintenance costs, considerable energy is lost in transmission and, in certain cases, you could lose up to 10 per cent of the energy just moving it from the point of generation to the point of consumption. This means that we are generating up to 10 per cent extra in greenhouse gases just to warm up the wires, in effect, to get the electricity from the Latrobe Valley to other parts of Victoria.

We find it hard to think of many other industry sectors where the market signals are hidden to this extent. For example, you would have a hard time sustaining any suggestion that there should be a uniform railway tariff throughout Victoria or throughout New South Wales. Yet, to a certain extent, that is what is going on in the electricity industry and has done for many years.

Probably more importantly, we believe that competitive neutrality is not being fully applied. With mixed public and private ownership of Australia's electricity industry, competitive neutrality is vital for efficient resource allocation. However, there is a possibility of corporatised publicly owned participants not necessarily obeying the rules, and we believe they must. As an example of that, I would like to table some work that one of our energy

companies, Yallourn Energy, has done which looks at the effect of some of these distortions. I have already provided a copy of this to Hansard for its records. This shows that major distortions can result from undervaluation of assets or capital and operating subsidies. We believe that national competition payments should take account of the achievement of competitive neutrality. Having gone as far as we have, and having privatised parts of our electricity industry on a national basis in a major way, we believe that the principle of competitive neutrality needs to be followed through. The question of ownership is not necessarily important, but the level playing field is.

We will also be seeking state and national endorsement of Latrobe Shire Council's energy advantage program to unlock what amounts to our greatest comparative advantage. The energy advantage program takes account of the fact that we have a unique concentration of generating capacity, that is, six generators within 20 kilometres of each other, and we can deliver cheaper electricity to local industry. We believe that the program will allow an unrivalled comparative advantage for us, offering cheaper electricity. We believe that this is an advantage both for the state of Victoria and for Australia in attracting footloose industries and competition with other regions internationally. We believe that there are significant environmental benefits as a result of transmission losses and that this would benefit our national greenhouse obligations. On that basis, I have already provided to Hansard a copy of our stage 1 report on the energy advantage, and I would like to provide copies to the senators.

Our energy advantage plan has essentially three parts to it. One is establishing a central energy park that gives consumers direct electricity supply linked to the region 6 electricity generators independent of the existing transmission and distribution system. This would reduce transmission and distribution charges and enable a range of complementary industries to locate on one site with access to secure, competitive electricity supply. Secondly, we believe that encouraging energy intensive industries to co-locate on land close to power stations owned by electricity generators will allow them to be exempted from transmission and distribution pricing under current regulations. Finally, we will be seeking a reconfiguration of the distribution network within the Latrobe Valley so that consumers are serviced by shorter transmission lines. This would provide a significant benefit. The point of this is that at the moment we have an anomaly where a medium sized electricity user in the Latrobe Valley can actually pay more for their electricity than they would in Melbourne.

One practical example of that is Rocklea Spinning Mill, which is a TCF industry located in Moe. It is one of the largest employers in Moe, it employs over 100 people, and yet it is paying more for its electricity lying 10 kilometres from Yallourn power station than it would if it were located in Melbourne. We find that a very odd outcome. We have discussed that with the National Competition Council, with the Office of the Regulator General in Victoria and with Eastern Energy, the local distributor. We are following it up but would like to place that issue on notice.

In summary, we would like to recommend a level playing field for corporatised entities versus private entities in the electricity industry. We will be seeking national and state assistance in achieving a comparative advantage, especially in siting energy intensive industries. That makes good environmental and economic sense, but we also believe that it

assists us to get back on our feet after having lost something like 10 per cent of our population in terms of jobs, which we believe has been an absolutely critical blow to us over about a decade. In fact, in spite of our remarks about postage stamp electricity pricing, we realise that the effects of an abandonment of postage stamp electricity pricing would be very detrimental to other regions in Victoria and Australia, so we are seeking a win-win solution on that one and believe our energy advantage program does provide that.

Finally, we believe in principle that there is still room for proactive infrastructure provision for regional growth locations. We believe that a national goal of population growth should be pursued. We believe that should be supported by national policies in the fields of infrastructure, education, labour market management, housing and urban development, and urban and regional research. Thank you very much.

5.66 The experience of the Greater Shepparton region is different. It is more positive and supports the finding that the impacts vary greatly:

Greater Shepparton³⁴

The demographics on the Greater Shepparton region... which you will probably find are a little different from Latrobe. Also, the approach that we have taken to the submission has been more to give an internal report of how Greater Shepparton has approached NCP principles and some general views on how we are seeing those affecting our community. Once again, I think they will have different consequences to what they have, as in the submission that Latrobe has done.

Greater Shepparton City Council is located roughly 200 kilometres north of Melbourne and has a population of 51,900, from the 1996 census, and we estimate it to be about 60,000 in 1999. Our unemployment rate is 6.7 per cent, which is the fourth lowest for regional centres in Australia. Our employment by industry is very diverse, with the highest employer being the retail sector at 16.37 per cent, the second highest being agriculture, forestry and fishing at 13.8 per cent, closely followed by manufacturing at 13.7 per cent. The horticulture industry in Greater Shepparton makes up a quarter of the whole state's production, and the dairy industry is actually three times larger than agriculture in our region. The viability of the region is supported by the likes of SPC, Furphy Tanks, Ardmona Fruits and Tatura Milk as our larger manufacturing producers. The catchment area for Shepparton, from a retail point of view, contains over 160,000 people. We have an arrangement, which is probably unique to regional Australia, where, because of the diversity of the agricultural base and the intensity of the irrigation, we have a lot of satellite towns of the likes of Tatura, Rochester and Strathmerton which are strong industrial bases in their own right.

34 Mr J R Francis, Greater Shepparton City Council, Committee Hansard, Melbourne, Friday, 16 July 1999, p 522-523.

In relation to how Greater Shepparton City Council has approached national competition policy, and I am also including competitive tendering in that process, the ratio of our in-house bids to external contracts is currently 60 external to 40 in-house. The structure of the organisation is very much orientated towards what we call a client-provider split. We have the client side of the organisation which looks after the administration and the management. Then we have another branch, which is our business unit branch, which actually controls the in-house tenders that then are bidding against services of the client, being the council providers, or also in the open market, including other municipalities in the region.

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From a general point of view, I think our council would agree that NCP has not had a negative effect within our region and probably, to some degree, has had a positive effect from an organisational point of view, from a local government point of view. We have definitely seen efficiencies by the outsourcing or external tendering of a number of our services, particularly in the areas of infrastructure, public open space and even in some of the community service areas.

From a community point of view, it is probably hard to measure the effects of national competition policy; however, we have not had the cases that Latrobe and other regions have had, where you have had huge downsizing of public utilities on infrastructure authorities to that extent.

From a local government point of view, Shepparton is strong through the national competition principles and CCT implementation. However, that really is not typical of rural Victoria by any means. We do sympathise with the smaller councils that do not have the diversity and the catchment base that Shepparton does. I think their circumstances are quite different from the positive approach or the benefits that we are seeing.

One of the negatives we would see with NCP in its broadest sense, but probably directly as the result of competitive tendering, is the downsizing of staff. You mentioned before the issue of the consequences that it has had on employment of blue-collar workers in the industry. Our figures, just from Greater Shepparton, would support the figures that the MAV were mentioning. We started, at amalgamation, with a staff of around 600. We are down to around 300 staff at this time.

Interestingly though, in the outsourcing of those services to external providers or to business unit providers, but particularly to the external providers, a number of our staff have gone to be employed with those external providers in our construction areas and even in some of our community services, in maternal and child health services, in the HACC services. The

conditions upon which they are moving into those areas might be different from the arrangements they had under the council, with its awards and enterprise bargaining agreements; however, there have been a number of cases where those staff have directly gone and worked under the new arrangements and picked up a redundancy from council in the process.

There were three councils prior to Greater Shepparton being constituted in 1994, and our smaller towns felt the consequences of amalgamation of local government more so than competitive tendering by the regionalisation of the depots into the main centres of Shepparton. As I mentioned earlier, quite clearly we have seen economic benefits in outsourcing, and they have been in the larger sectors of road construction, together with some of the smaller sectors such as maternal and child health. Even our local saleyards have found that, by outsourcing the operation of that facility, they are generating hundreds of thousands of dollars back to the council to use in core services.

An issue that I think needs further clarification, and the MAV touched on it in its introduction as well, is the definition of what is deemed to be a public interest. I think each individual council would probably look at public interest as being something different, in its own right. From an industry point of view, there needs to be some criteria to determine public interest, whether it is done at a Commonwealth or at a state level; or, if it is done at a local level, there needs to be accountability and transparency to the communities as to what is deemed to be public interest.

Competitive neutrality is something that, from our council's point of view, we have embraced favourably. We see benefits for it in as much as it does place a level playing field out there. I think a lot of the businesses in Shepparton that are competing against in-house business units of council expect that council is playing on a level playing field. Consequently, by competitive neutrality principles being enforced, and we do enforce competitive neutrality principles, if external bidders do lose, they feel that at least it has been a level playing field.

From a community point of view I think that, if you ask anybody in the street, they would say that in telecommunications and, to some degree, in the power industry, they have seen some improvements in the quality of service in those facilities to the greater Shepparton region. However, I think there is still room for improvement, particularly in telecommunications, to rural Victoria and to the outskirts of our municipality as well.

Further changes that we would like to see in competitive tendering are in relation to the structuring of the contract arrangements. For example, Victorian local government came out of a situation where it may not have had very much expertise in designing contracts and specifications to, basically overnight, having to find 50 per cent of its expenditure from an external source, and it had to build up a lot of expertise in writing contracts. I think it would be fair to say that not all contracts have been right in their first round, and there are areas for improvement when they go out the second or third time.

In those arrangements we would like to see councils given the opportunity to enter into more partnering arrangements, rather than having a very detailed specification written for which strong terms and conditions are implied, and a move to an arrangement where we are sitting down with potential providers and asking how they can actually enhance the service. That means that you might be moving away from an economic basis where you are awarding contracts to looking at more quality of service.

In relation to the reporting on national competition, the reporting that we now do, in the last 12 months or two years, under our annual report requirements is a good start; however, I do not think they are designed to give the average person in the street a real understanding of the principles of national competition and how the council is using them. I am not sure whether that is a federal or state guideline, but I think a fair bit of work needs to be done in relation to that improvement. Thank you.

5.67 The Committee considers that the cumulative effect of micro-reform policies on rural and regional areas is a serious issue warranting far greater attention by all jurisdictions than is occurring at present. It is apparent that the impact of these policies has been disproportionate between metropolitan and country areas in that the latter does not have the capacity to quickly adjust or absorb the changes which those policies can generate, such as unemployment. Clearly, local government must look to the public benefits test and carefully assess the impact of these policies for their region. There may be a case for more to be done with respect to transitional arrangements and compensation in areas adversely affected by the implementation of NCP and other policies. The following quote from the Queensland Farmers' Federation sums up the Committee's view:

It would be worth the Council of Australian Governments sitting down - and I think this is part of the process - and saying, 'What has NCP delivered? Where is it going? Is it having adverse impacts in some areas? Is it working as well as it could? Let us revisit it. We are entering a new millennium; let us revamp it.' But I think it needs one critical element, and it is covered in your terms of reference - that is, the impact on urban and rural and regional communities. I think that has been missing from the equation.

I have to question whether, if every Australian is 1c better off but that is at the cost of some small towns in rural and regional Australia, the quality of life in this nation really is that much better. That is obviously a political judgement on matters. But I think we could probably have our cake and eat it with NCP with just a little bit more sensitivity to some of the social issues.³⁵

5.68 The Productivity Commission's report (findings summarised in Chapter 3) specifically details the impact of NCP on rural and regional Australia. The

35 Mr G Dalton, Executive Director, Queensland Farmers Federation, Committee Hansard, Thursday, 8 April 1999, Brisbane, p237.

Commission' s study was a mammoth effort to identify and quantify the kind of trends outlined above. The Senate Committee commends their efforts.

5.69 Having said this, it must be recognised that the Commission's findings are based on Input/Output analysis dependent on various assumptions and therefore subject to the verification of the passing of time. The Senate Committee believes that the task given to the Commission was a very difficult one. From its own findings, there would appear to be no clear way to conclusively extract and separate the impacts of NCP from the impacts of all of the other policy and economic variables at play in the community. The policy has been applied differently, and has impacted differently in different regions. Some elements of reform, such as those in the major infrastructure industries - electricity, water, rail and road, gas - predate NCP, although they are now subsumed into the process. Some elements of reform are yet to come - many legislative reviews have yet to be undertaken and recommendations acted upon. Some areas of government policy such as competitive tendering and contracting-out have been introduced compulsorily in some States and not others.

5.70 The Commission's report portrays a scene of considerable social and economic upheaval. Its brave estimate of a 2.5 % increase in real gross national product must be seen as just that - an estimate based on assumptions and subject to potential variation.

5.71 The Committee has received a significant amount of evidence from some States regarding the impact of NCP on urban and rural and regional communities. Statistical evidence supports the claim that some remote and rural towns are declining. It appears to the Committee that NCP and micro-economic reform are, in some cases accelerating an existing process. There appears to be a multitude of factors driving this process, including the impact of Competition Policy.

5.72 There is anecdotal evidence of a loss of social cohesion, amenity and human capital in small rural and remote communities. In the opinion of the Committee, the improper application of the public interest test or the inadequate definition of community service obligations may be contributing to this. It is the Government's responsibility to ensure that each of its citizens receives, as part of community welfare obligation, equitable access to basic health and welfare services, telecommunications, education, transport and housing. There would appear to be a perception rightly or wrongly, that either the services are being inadequately provided or the government is abandoning its responsibility in this regard. The Committee is concerned about the continuing confusion and lack of sophisticated knowledge about NCP in remote, rural and regional communities in particular. The Committee is of the view that there is a need for an information and advisory service on the application of the NCP. This service is not intended to replace existing services provided by State Government agencies. These services are rightly directed to State-specific issues or circumstances. Rather the proposed advisory service is to address the lack of a uniform national perspective.

5.73 NCP should not be used as an excuse by governments to abrogate their responsibilities for the provision of adequate services to country communities.³⁶

Isolated Aboriginal and Torres Strait Islander Communities

5.74 The issues for Aboriginal Communities arising from the introduction of NCP are unique and complex. Firstly, there is the broad concept of difference which must be recognised. The Royal Commission into Aboriginal Deaths in Custody 1991 noted:

‘The simple and undeniable fact of the matter is that the condition of Aboriginal people is different from that of non-Aboriginal people; firstly, because of the accumulated disadvantage which this report indicates; secondly, because a very substantial number of Aboriginal people live in remote areas; thirdly, because they have different cultural background; fourthly, because they are just coming out of a period of having no rights and no say in their affairs; and fifthly, they have continuously been responding to agendas determined by others.’³⁷

5.75 The same issues arise with the delivery of many health and community services to Aboriginal communities. Where contracting out or privatisation of community services under National Competition Policy dismisses these issues in favour of more narrow notions of efficiency and effectiveness, there is a risk that these programs will miss their mark. The Committee considers that the proper use of the public interest provisions of the NCP provide the flexibility to address the specific concerns of remote Aboriginal communities, as it should also be able to address the needs of all regional Australian communities.

5.76 A further issue for Aboriginal and Torres Strait Islander Communities is the fulfilment of community service obligations and the serious equity and social justice issues to be considered in the public benefit test of any NCP measures which affect these communities.

5.77 In giving evidence to the Committee, ATSIC stated:

The kind of impact of NCP on indigenous people varies depending on whether they are urban, rural or remote-and the population splits on those lines into about a third, a third, a third.urban dwelling indigenous people may have had some small price and service benefits from some of the competition processes so far. Certainly their experience in rural and regional centres is pretty similar to that of the mainstream-the loss of human capital, of services and financial services has been fairly pronounced.

36 Impact of Competition Policy Reforms on Rural and Regional Australia, Inquiry Report No 8, Productivity Commission, 8 September 1999, AusInfo, Canberra, p xxv.

37 Royal Commission into Aboriginal Deaths in Custody, Final Report, Commonwealth of Australia, 1991, Vol 4, p 24.

In remote communities, it is a fairly complex picture. ...for some remote communities ...there has been no perceptible change in water and power services....I think it is fair to say that, in a sense, the concerns that have been flagged about the impact of the competition policy in terms of low income earners and people in rural and remote towns are shared by ATSIC, certainly, and by most indigenous communities.

I think from an indigenous perspective and certainly from an ATSIC point of view, there have been some small and limited benefits...One major example of our driving a tendering process relates to water and power services for a lot of those remote communities in WA. Until about three years ago, we channelled about \$8 million through government utilities in power and water in WA to encourage them to provide water and power service to remote communities. We did a review back in 1995 which led us to tender out those services in Western Australia and to set up three service regions. We saved ourselves about 75 per cent in service delivery costs through working around the state utilities rather than through them, and in the few years since then we have actually achieved quite significant improvements in service delivery...

In terms of the financial sector, experience has been that bank closures have been proceeding apace, and that has had a pretty significant impact on indigenous communities....there are still 10,000 or 12,000 ...indigenous people, who still do not have the benefit of having bank accounts.....

The withdrawal of financial services from the bush has-as other people have mentioned-created a vacuum that indigenous people have tried to fill themselves. Up to date, there are two indigenous-controlled credit unions that have sprung up to try to fill the vacuum, as it were. I think that is the trend for the future...³⁸

5.78 In conclusion, it can be said that NCP is certainly not the major policy change driving the negative outcomes which are perceived to be happening in the community. However, it is part of a framework of policies and economic philosophy or economic decision making which are acting contiguously to produce varied outcomes.

5.79 In conclusion, it can be said that greater attention should be given in the preparation of legislative reviews, to the intent of community service obligations to ensure the maintenance of appropriate levels of service.

Recommendations

19. *That the Federal Government in consultation with local government and industry and community bodies and NCC, create a 'one-stop-shop' advisory service to provide local government, industry bodies, individuals, companies, and community groups with advice which will enable them to tackle competition policy issues.*

20. *That, this service should also be a mechanism by which concerns or complaints can be channelled to the appropriate authority for resolution.*

Environmental Impacts

Background

5.80 In Australia, environmental protection and natural resource use (land, water, fisheries, forests, minerals and energy) are primarily administered under a series of State laws and institutional frameworks. The Federal Government maintains an overall coordinating role through the Council of Australian Governments (CoAG), Ministerial Councils and other industry bodies, and also contributes funding through various mechanisms such as the Natural Heritage Trust. The Federal Government has powers over the environment and other areas under international treaties and corporations law. Against this background, management of the environment, and of natural resources in particular, has been a matter for publicly-owned agencies.

5.81 The importance of National Competition Policy to the environment is twofold:

- That part of the Competition Principles Agreement that has become known as the Public Interest Test, parts 3 (d) and (j) enable governments to include environmental considerations in Competition Policy legislative reviews and NCP reform processes. The Test specifically includes government legislation and policies relating to ecologically sustainable development and the efficient allocation of resources. Since the test is not exclusive, any other environmental issue/aspect which governments wish to be considered can be. This process implements the principles of sustainable development contained in State and Federal environmental legislation enacted prior to NCP.
- In February 1994, CoAG adopted a strategic framework for the reform of the Australian Water Industry covering natural resource management, user pays pricing, more rigorous approaches to future investment, trading in water entitlements, institutional reform and improved public consultation. The Tranche payments were linked to achievement of these goals.

5.82 In theory, competition should enhance environmental benefits through:

- Removing subsidies which promote activities with an environmental impact;
- Implementing full cost recovery/user pays for environmental resources such as native forests and water;
- Removing legislative protection from industries which are high users of natural resources; and
- Providing the opportunity to access various public infrastructure.

5.83 In practice, the Committee has found, commensurate with the application of the policy to the wider economy, concern from interested parties about the implementation of the policy across Australia.

Environmental Issues

5.84 The submissions and other evidence to the Committee raise several issues:

- The inadequacy of the NCP legislation and agreements;
- The inadequacy of State legislative review processes;
- Pricing, subsidy or regulatory distortions having adverse environmental impacts;
- Fundamental issues of private versus public ownership of natural resources;
- Adverse social impacts of water pricing reforms: and
- The inadequacy of the application of the public interest test.

Adequacy of the NCP Legislation and Agreements

5.85 The Australian Conservation Foundation has claimed in its submission to the inquiry that because the principles of Ecologically Sustainable Development are not sufficiently integrated into public policy nor given official definition in State/Territory legislation, the inclusion of a requirement to take account of ESD in the NCP legislation loses force.

Unfortunately, few Australian jurisdictions have adopted any official definitions of ecological sustainability, and even then, only in relation to quite specific areas of legislation (eg. NSW EPA Act). For this reason, the clause within the competition Principles Agreement is lacking in substance, and the capacity of organisations such as the ACF to ensure that the principles.....are afforded adequate recognition and consideration by state government agencies in particular is problematic.³⁹

5.86 That there has been a general failure to institutionalise ESD is a view shared by Dr S. Dovers of the Australian National University:

..there is simply the bothersome nature of change.....Most significantly of all is the fact that seriously pursuing sustainability will involve addressing deep, structural inconsistencies between human and natural systems. The problem attribute of systemic causes is a supremely difficult one: the roots

39 Submission No 88, ACF, p 1009.

of unsustainability are embedded firmly in our systems of production and consumption and patterns of governance and settlement.⁴⁰

5.87 Dovers continues to develop this argument and compares the level of commitment to ESD to the level of commitment to NCP and other micro-economic reform policies.

Anyone who has played junior football can impart the invaluable lesson that a level playing field, set rules and fixed goal posts - the stuff of healthy competition - matter little when someone twice your size charges at you. Just as big firms can (and do) run over and flatten small firms in a "fair and competitive" market, so it is that weakly institutionalised policy considerations can be easily outweighed by strongly institutionalised ones. Thus it is for ESD, and the lack of institutionalisation is evidenced in comparison to other public policy fields. Even official sustainability policy states that environmental, social and economic policy should be balanced and integrated, and this means that there should be some degree of parity in policy processes. Yet the underpinnings of much social and especially economic policy are vastly more substantial than environmental concerns. Where are the ecological equivalents of the Australian Bureau of Statistics, National Accounts, Census, input-out-put tables, monthly population surveys, or Productivity Commission? Where is the implementation that would make ESD - a weak statement of ecological rationality - comparable to its counterpart from economic rationality, the pervasive National Competition Policy (NCP)? NCP makes for an interesting comparison.

ESD and NCP should be, in theory, comparable, but they are not.....both are domestic manifestations of broader, international "metapolicy" concerns. Yet ESD has been kept to the margins of public policy and administration.....On the other hand, NCP is having a profound impact across all policy fields, and is being implemented with some vigour and relish. One part of NCP is a legislative review of some 1800 Australian statutes (including many environmental laws), seeking out "anti-competitive elements". Suggesting such a wide review to find "unsustainable elements" in environmental laws would not be taken seriously.⁴¹

5.88 The ACF considers that it is the responsibility of CoAG to ensure that the National ESD Strategy is progressed. As the Committee has already noted, the failure of CoAG to formally meet to discuss issues relating to NCP has serious ramifications for wide ranging policy co-ordination.

40 S Dovers, *Institutionalising Ecologically Sustainable Development*, in, *Australian Environmental Policy 2*, edited by K J Walker & K Crowley, UNSW Press, Sydney, 1999, p 215.

41 S Dovers, *Institutionalising Ecologically Sustainable Development*, in, *Australian Environmental Policy 2*, edited by K J Walker & K Crowley, UNSW Press, Sydney, 1999, p 215-216.

Adequacy of State Legislative Review Processes

5.89 Criticisms of the review processes under NCP are not confined to the environmental sector. The same issues seem to be a recurring theme - inadequate consultation processes, ad hoc unco-ordinated programs of review, lack of arms' length review, lack of transparency, and the predominance of economic factors in considering the public interest.

5.90 The ACF Submission stated:

The process of reviewing legislation for compliance with competition policy is one which is very difficult to track, appearing to proceed in an ad-hoc and, largely unaccountable fashion. As the arbiter on these issues, the NCC is no doubt having great difficulty in either tracking progress, or steering these reviews in the right direction.

One concern is that reviews are piecemeal, reviewing one piece of legislation at a time without considering other closely related legislation at the same time. For example, the review of the Victorian Forests Act (1958) is not able to also review related legislation covering various forms of public land use, annual reporting, relevant treasury regulations, endangered species legislation, specific legislation governing legislated agreements with Amcor (Victoria's largest timber customer), etc.

Another concern is that the process for these reviews is neither transparent nor participatory. While in some instances stakeholders are consulted by companies contracted to review legislation, this is more often not the case.

The skills and expertise of those reviewing legislation is often totally unrelated to the legislation in question, and hence results from reviews may prove to be either unworkable, or damaging to the environment.⁴²

Distortions in Policy, Regulation or Pricing causing Environmental Impacts

5.91 A number of issues have been raised in relation to policy, regulation, pricing distortions and perverse incentives which may be having adverse environmental impacts.

5.92 Reforms of legislative and regulatory systems in each State are proceeding at a pace monitored by the NCC under the Agreements. There are a considerable number of pieces of legislation and arrangements to review and these are being done on a priority basis. There are still many pieces of legislation still to be reviewed (See NCC Annual Report 1998-99, page 54) before the end of 2000 and it is unclear whether the criticisms presented to the Committee are as a result of new arrangements or arrangements yet to be reviewed. It may be that these issues will be resolved during the next few years as new arrangements are settled.

42 Submission No 88, ACF, p 1017.

5.93 Nevertheless, the Committee would like to draw the attention of the NCC and each jurisdiction to the issues which have been raised.

5.94 Firstly, the ACF has questioned the success of regional development policies which feature subsidies for the use of environmental infrastructure services such as dams and the exploitation of resources such as native forests in order to maintain regional employment and promote economic development:

In Victoria, the policies of subsidising native forests logging have been justified, in part at least, as a means of maintaining regional employment in areas such as East Gippsland. Effectively, the commercial costs of managing such regions for timber production are being subsidised, to an undisclosed extent, on the grounds that the maintenance of regional employment, all at the expense of the many and diverse ecological and tourism values which this region supports.⁴³

5.95 The principles of the design of community service obligations and subsidies under National Competition Policy are that they be open and transparent. It may be that the community is willing to pay for such subsidies referred to above by ACF, however, without the knowledge to assess the alternatives, communities cannot make appropriate public interest judgements. On the other hand, the existence of, for example, royalties which favour the logging of native forests over plantation forests, would appear to be totally in contravention of ESD or NCP principles.

5.96 The ACF goes on to cite other examples of distortions including:

For example, companies specialising in water-efficient technologies are disadvantaged by State Governments' practices of subsidising water resources and related infrastructure. Farmers and other landholders interested in investing in hardwood plantations (for example) face unfair competition from state native forest agencies, not to mention from similar government-controlled forestry operations overseas.⁴⁴

5.97 These criticisms may be premature considering how much water industry and other legislative reform there is still to go, however, the issues they raise should be considered in the ongoing reform process.

5.98 The ACF also made a number of concerns in relation to the restructuring of Victoria's energy sector:

Victoria's energy sector provides another example of how investors in the (now-privatised) distribution and retail sectors benefited from policies which, at the same time, deliberately perpetuated a trading position which contravenes the competitive neutrality principle.

43 Submission No 88, ACF, p 1010.

44 Submission No 88, ACF, p 1011.

Restructuring and sale of Victoria's generating, distribution and retailing networks for electricity was characterised by the following:

A broadscale write-off of historic debt, providing electricity with an uncompetitive edge over other competing forms of energy services (gas, solar, co-generation, demand management services, etc.)

Regions with high distribution costs (transmission costs) have been cross-subsidised (ie "equalised") by other regions via rural electricity subsidies. While energy subsidies *may* be appropriate in rural regions, the competitively neutral approach would be to subsidise *generic* energy expenditure, rather than providing electricity service providers with an unfair competitive edge. Hence specialist local power supply services, most of which involve reduced greenhouse emissions and lower unit distribution costs, are priced out of the market.

The "pool" price system for those selling power onto the grid discriminates against those who can supply at reduced, or zero, transmission costs. (ie. A renewable energy producer in Melbourne cannot gain a competitive advantage over a Latrobe valley generator, despite the fact that the Latrobe generator faces higher transmission costs and higher power leakage rates.)

Economic externalities associated with greenhouse emissions are not factored into the price of coal-fired power. Similarly, industry regulation excludes consideration of the need for greenhouse emissions targets, and of policy instruments which may aid in achieving such targets.

The Victorian price cap system means that the only real way for a distributor to increase its revenues is to sell more power; a major disincentive to improving energy efficiency. For instance, a distributor considering selling a wider range of energy services, including energy audits, efficiency services, and efficiency improvement incentive schemes, cannot be financed via higher power prices, even though they may well be providing consumers with better value-for-money.⁴⁵

5.99 ACF goes on to note anomalies in the treatment of the various elements of the transport sector. The issue of distortions caused by the failure of NCP to promote intermodal competition in the transport industry is also considered in Chapter 6.

...the full costs on road construction, maintenance and refurbishment are not attributed to the road freight sector, which benefits from both direct road subsidies, and from cross-subsidies from road revenues derived from domestic cars. All things being equal, this gives road freight an uncompetitive advantage over other forms of freight transport.⁴⁶

45 Submission No 88, ACF, p 1015.

46 Submission No 88, ACF, p 1016.

5.100 This latter criticism is reinforced by the evidence of Prof Laird (Chapter 6) who highlighted that Australia has the highest level of road freight per capita in the world at the expense of rail.

... firstly, land freight is important to Australia. Secondly, rail should be doing a lot more of the nation's land freight task and, because it is not, road is being overworked to the point that Australia has the highest road freight per capita measured in net tonne/kilometres per person in the world. Thirdly, national competition policy is not fixing this problem, which has two parts: poor mainland intercity track as identified by a Senate references committee in 1997 followed by the House of Representatives standing committee on transport in 1998, the Smorgon Rail Projects Task Force this year and the Productivity Commission draft report. In some ways national competition policy is actually making the problem worse and the three following areas come to mind. Firstly, the first CPA tranche compensation payments required New South Wales to reduce their heavy truck annual charges. The amount of reduction was to slash the heavy semitrailers at 42½ tonnes gross vehicle mass from about 8,000 to 4,000 a year and to slash the B - doubles from about 14,000 or 15,000 to 5½ thousand to bring them in line with the National Road Transport Commission recommended or officially determined charges.

In the second area, national competition policy is driving rail to reduce its rail freight rates in areas where it can make a profit, most notably coal. The impact is shown in Queensland. Before, NCP funds were available for mainline rail deviations under both mainline electrification in the eighties and mainline upgrade in the mid - nineties. Now, Rockhampton - Townsville concrete resleepering is so budget constrained that it may have to proceed without any realignment.

The third area is where rail reform has had some positive attributes but one of the unintended consequences was downsizing of the skilled railway engineering base. In summary, the real problem is not so much rail competition - particularly in areas where markets are thin, like less than 10 million tonnes of freight per year on a given section of track - but road - rail competition. The Australian Transport Council, comprising the nation's transport ministers, two years ago agreed that this matter should be addressed as a matter of urgency and the progress is not inviting, except for the diesel question. Even then it is not the straight - out win for rail, getting rid of that fuel excise.⁴⁷

5.101 The pattern which is apparent from the above, is that State/Territory and Commonwealth jurisdictions are failing to manage the interrelationships that form a total market structure. In other words, piecemeal application of the policy to components of industry sectors rather than application of the policy to the relevant wider market - for example, not competition within the rail freight industry and road freight industry separately, but the whole land freight sector; not electricity supply

47 Prof Laird, Committee Hansard, Sydney, Thursday, 9 September 1999, p 819-820.

separately, but energy services, including insulation services, not a sewerage system, but waste disposal services.

Public versus Private ownership of natural resources

5.102 The micro-economic reforms in train throughout Australia has led to the corporatisation, privatisation and contracting-out of a range of government-owned or operated services, including for example, the supply of water and sewerage services. There is the potential under these reforms, to have private management of natural resources such as parks and wildlife sanctuaries.

5.103 The private ownership and control of such resources is contentious. However, in Australia there are already developments in this area. Dr Wamsley of Earth Sanctuaries Ltd, which is a private company engaged in the business of creating wildlife sanctuaries, has raised a number of issues with the Committee in relation to the competitive conduct of the publicly owned National Parks and Wildlife Service and put the case for private protection of the environment in Australia, advocating essentially that the environment become a commercial enterprise like any other:

The National Parks and Wildlife Service is both our competitor and our regulator, and they have made life very difficult for us as such - as does any monopoly that faces competition. It was a breath of fresh air to us when the competitive neutrality agreements were first signed. I must say that it is with great sadness that we find they had nothing to do with competition; they had more to do with other things. For example, if we identify a block of land in New south Wales for our development, the New South Wales National Parks and Wildlife Service will take it. They have done it at Byron Bay in northern New South Wales, they have done it a Tarawi in western New South Wales, and they have done it at canyon in the blue Mountains.

In South Australia, even though the competitive neutrality commissioner ruled in our favour, the South Australian government refuses to implement his recommendations. So our problem is simply the non-implementation of the national competition policy, not its implementation.....

My appeal to you is that the neutrality policies be implemented in a sensible manner for the benefit of the wildlife and the environment of Australia.⁴⁸

5.104 The question of the ownership and appropriate management of natural resources can, in theory, be divorced from the principles of ESD. Whether resources are in the hands of private individuals such as farmers or eco-tourism companies or

48 Dr Wamsley, Committee Hansard, Monday, 2 August 1999, p 610-611.

corporatised government-owned bodies, the application of ESD principles should be required.

5.105 Further, it can be argued that it is necessary to assign dollar values to the environment in order to ensure that it is adequately taken into account in assessing the public interest of proposals.

... environmental issues, native flora and fauna, et cetera. These are important commodities. The mere fact that we have difficulty measuring them does not mean that they do not have value. Yet too often we proceed as though they are without value. One of the tasks we set upon ourselves is to try to work out some methodologies for getting some values in this context.⁴⁹

5.106 The issue of the valuation of certain difficult to measure factors in the assessment of public interest under NCP was a matter for discussion at a number of Committee hearings. In Perth, Senator Murray discussed the valuation of externalities and intangibles with Ms Margetts:

Senator MURRAY – In company balance sheets, to make people wake up to value, they make sure they give a value to intangibles – mastheads and brand names. In New Zealand when they created a national balance sheet they gave a value to their forests. To get carbon trading on the map, you have to give a value to it. Is one of the problems with competition policy that there is no numerical weighting given to environmental, social and economic components of the public interest test, with the consequence that the ideology of whoever is doing the assessment influences the value judgement that emerges because they are not giving the appropriate numerical weightings or according appropriate numerical weightings to their decisions?

Ms Margetts – I think you are right. I think what has happened is that the price, in a limited sense, or not so much even the price, but the profitability to industry, has been seen as the major goal and those other issues which do affect the viability from the community's point of view have been seen as something that gets argued later. That is very difficult, because putting the arguments together is expensive to start with. But, yes, if those resource values were in there to start with, the whole equation would look different. Terry Dwyer, as I mentioned, in the RIRDC reports also argued that the value of land is not counted properly as a factor of production. So it seems that competition policy has tended to concentrate on the productivities of labour and capital.

Senator MURRAY – Isn't that the second follow-on? The shortcoming in the legislation and the way in which the whole thing is designed is that it is not a precondition that full pricing should be established; in other words, not

just basic economic pricing but a full pricing consideration which includes externality costs.

Ms Margetts – That is right because, if we are relying for instance on environment policy, that is very limited as to what can be argued. It is about environment versus the economy. But if the pricing and value of commodities, resources, clean water, clean air and non-renewable resources were added in, then the whole decision to start with would have been different. I think you are right.⁵⁰

5.107 The Committee considers that insufficient attention has been given in legislative reviews to attempts to capture the value of environmental factors. The Committee believes that attempts should be made to account for environmental factors and that such an approach would enable decision-makers to be fully apprised of the consequences - social, economic and environmental - of proposed action.

Adverse Social Impacts of water pricing reforms

5.108 A number of Submissions have been received from rural water users concerned about the advent of tradeable water rights and the effects on farm viability. The Committee heard some evidence from rural water users in Western Australia and a number of North Queensland submissions also focussed on concerns over the application of user pays pricing of water for town supplies.⁵¹

5.109 The social impacts of the application of full cost recovery principles was a matter raised in hearings of the Committee. Calls for the striking of a balance between social, environmental and economic objectives are well appreciated. Senator Murray noted the argument that higher prices might result from the reforms intended to reflect the true costs of the provision of some services; but it was noted that such reforms may result in social ‘fallout’.

Senator MURRAY – Isn’t the other problem that competition policy is regarded as a failure if prices go up and yet the consequence of full cost pricing and of reform should in fact be an adjustment of price levels whereby some prices will go down and others will go up to properly reflect social, environmental and economic costs?

Ms Margetts – You are right. There are definitely some areas where we have undervalued resources – there is no doubt about that. However, it could be argued that the outcome and the way implementation is taking place – for instance, on the water reforms in Western Australia and other states – might mean for us that we do not have a fruit and vegetable industry any more. Albany and Margaret River in the south-west might end up being reliant on imported flown in vegetables from other countries. Now, the energetics and the sheer lunacy of that as a policy just staggers belief. So we might think

50 Senator Murray & Ms Margetts, Committee Hansard, Perth November 19, 1999, p. 993.

51 N A Birch, Submission No 45.

we are doing the right thing but going about things in such a ham-fisted way that we end up with a problem that is much bigger than the one we started with. I think that kind of thing need urgent and clear review.⁵²

5.110 The need for co-ordination of policies in striking the appropriate balance to achieve optimal benefits was also discussed:

Senator MURRAY – Mr Harman, what are we dealing with here with your discourse – and it is really helpful – is the question of full costing and full pricing. Let me tell you what I mean by that. Full costing has emerged – although it has not been described this way – in the committee inquiry as being the effect of competition policy when you take in the total cost of a competition policy decision in terms of social and environmental as well as economic factors. So the question of how rural and regional towns benefit or do not benefit from competition policy has to take in the consequential effects of that. Full pricing is at the other end of the scale but also needs to take into effect the full prices to the community that need to be recovered.

So in your case, the coal-fired power station, the full price of the cost of emissions which the state has to wear, the cost of pollution, the real cost of using carbon fuels. It seems to me that National Competition Policy has primarily focused on normal, historical, traditional pricing methods. I would like a response to this because if electricity, as an example, was fully priced as the total real cost of the provision of that power, you would find coal becoming very unsatisfactory economically and other forms of fuel becoming much more satisfactory. Don't you think that before we can work out what price Esperance should bear, with a generational mix of its power, versus say Perth, we have to develop a full pricing understanding and approach?

Dr Harman – Yes. This is standard economic analysis in all energy type courses and so on. It goes by the slogan 'Internalise the externalities.' I am sure you have heard that expression. That is not necessarily an aspect of competition policy. I think competition policy has to be reinforced by other policy frameworks, and that is where environment policy should come in. It should be the environment policy that says, 'You have to put your prices, and the prices you charge your consumers should reflect not just the cost to the utility but what are the particular costs that your particular generation or your transmission processes impose on the society.' There is a good example that I am sure, Senator Lightfoot, you are familiar with where the state government forced Western Mining to install a desulphurisation plant in Kalgoorlie. Kalgoorlie accounted for something like 25 per cent of Australia's sulfur dioxide emissions and people came the view ...

... The state government came to the view that they would tell Western Mining that they had to spend \$200 million fixing that problem up. So that is the scope for environment policy, and competition policy should work in

52 Senator Murray & Ms Margetts, Committee Hansard, Perth 19 November, 1999, p. 994.

conjunction with environment policy. I do not think we should load everything into competition policy. It is a necessary aspect to it – getting prices right is exactly what you are talking about – but we need input from the environmental policy area to get that side of it correct.⁵³

5.111 The Committee recognises that water reforms are a key element of the NCP and that these reforms are intended to have benefits in terms of the environment and delay or remove the need for capital works such as dams that may have associated environmental costs. However, there are some contentious issues associated with the costing of works and allocation of those costs.

5.112 The response to water issues raised in evidence with respect to urban centres may lie in the development of community service obligations but this is unproven. With respect to rural water use the issues are more complex and involve the costs of production of agricultural produce, impacts on the environment, land values and property rights. The Victorian Case Study below illustrates an attempt to meet community service obligations and address water trading and water pricing issues.

URBAN AND RURAL WATER - A CASE STUDY⁵⁴

This case study illustrates how competitive trading systems can allocate scarce resources (such as water) to higher value uses, and create employment. It also shows how careful attention was paid to social welfare objectives when shifting to consumption based pricing.

In February 1994 the Council of Australian Governments (COAG) agreed to develop a "strategic framework" for water reform. In April 1995 this strategic framework was brought within the ambit of the NCP process. The Victorian Government has implemented a wide ranging set of reforms to the structure and regulatory framework of the Victorian water industry, consistent with its obligations under the strategic framework. The objectives of these reforms are to:

- *achieve the lowest possible sustainable water prices for Victorians, consistent with the achievement of service quality and environmental outcomes;*
- *generate a more efficient industry and encourage efficient investment;*
- *provide the framework for an efficient and sustainable water market; and*
- *ensure a regulatory environment that provides consumers with the best protection in terms of price, safety and service standards.*

The benefits of the Government's reform program have been enjoyed across Victoria - most recently through the price reforms implemented on 1 January 1998 - which

53 Senator Murray & Dr Harman, Committee Hansard, Perth 19 November, 1999, p. 981-982.

54 Submission No 123, Premier of Victoria, October 1998, p 8-11.

delivered price reductions to 85% of properties and 18% reductions in the average domestic bill.

The water reform program has been communicated widely through a task force on water reform, established by Ministers of the Agriculture and Resource Management Council of Australia and New Zealand. There have been numerous newsletters and fora through which to publicise the reform agenda. Also individual elements of the program-for example the drinking water quality guidelines-have involved detailed community and industry consultation.

The reform initiatives can be broadly divided into five, related, categories: (i) water trading; (ii) improved industry structure; (iii) pricing reform; (iv) economic regulation; and (v) competitive neutrality.

(i) Water trading

Water trading allows voluntary transactions to transfer water to areas where it has a higher value. Since all transactions are voluntary, all parties to the trade must be better off. The Government's role has been to convert existing rights to water into tradeable entitlements and then to encourage water trading. Sellers of water rights receive additional funds to invest in other activities, while buyers have the capacity to start up new activities. The resulting increase in agricultural production is expected to create many new jobs. Moving water to users who value it more highly also has the capacity to make new developments possible without the need to construct new dams.

Water trading has also improved environmental operating rules negotiated during conversions to bulk water entitlements, leading to enhanced environmental protection. As well, attaching a value to water rights encourages improved on-farm irrigation practices.

Specific new enterprises made possible by water trading include "Boundary Bend," a Greenfields vegetable farm at Robinvale in Northern Victoria, and Nangiloc vineyard, near Mildura, which purchased water rights from a citrus farm in Wentworth, NSW.

(H) Improved industry structure

The 1994 disaggregation of Melbourne Water has facilitated "competition by comparison" between the three retail businesses in the services they offer customers. The Office of the Regulator General (ORG) has established comparable performance measures, and ensured publication of relevant data. The most recent of these, published in March 1998, indicated that the industry's performance against the measured criteria had improved over the review period.

For the supply of urban water outside Melbourne, amalgamations of the previously very small water boards have enabled the establishment of 15 businesses of sufficient size to exploit scale economies and to attract skill based Boards of Directors.

The disaggregation of the former Rural Water Corporation into 4 separate rural water businesses has facilitated better local management and more involvement of customer advisory committees in local decision making.

The new industry structure has increased water companies' responsiveness to customers' needs, and has resulted in fewer restrictions to supply and more sensitive debtor management. The changes have also significantly improved drinking water quality in rural areas.

(iii) Pricing Reform

Old price structures-with charges reflecting the value of the property rather than the amount of water being used-have been replaced, both in Melbourne and in the non-metropolitan urban systems, with prices that are based more closely on the cost of the service.

In Melbourne, water and sewerage rates based on property values were abolished for all customers. These charges were replaced by a flat fee and "user pays" charges, to ensure that consumers pay for the water they use, and so have an incentive not to waste water. A shift to prices based on cost of service has a greater impact on households with larger populations, and on households with a low property value. It therefore had potential for adverse social impacts. The Government assumed \$850 million of Melbourne metropolitan water industry debt to ensure the social impacts were minimised. At the same time the Government provided an additional capital works injection of \$410 million for water businesses in urban areas outside Melbourne, and \$40 million for rural water authorities.

The changes have resulted in lower bills for 85 per cent of properties, and fairer pricing through smaller cross subsidies between commercial and non-commercial customers. A rebate scheme was introduced for not-for-profit organisations, and the hardship grant scheme was extended to rural Victoria.

The new industry structure places pressure on each water business to offer the lowest prices by tying prices charged to future revenue determinations.

(iv) Economic regulation

Responsibility for economic regulation of the Victorian water industry has been given to the Office of the Regulator General (ORG), a new independent regulatory authority. The ORG's objectives are to:

- Ensure the maintenance of an efficient and financially viable water industry;*
- protect the interests of customers with respect to water industry charges and terms and conditions of water industry services; and*

- *promote the reliability and quality of water industry services.*

As a result of the new regulatory structure, the water businesses consult more closely with their customers, and are more sensitive to their needs. Service standards (for example, time to restore supply) have improved, the number of restrictions of supply for non-payment of bills has fallen, and innovative "customer friendly" payment methods have been introduced.

(v) Competitive neutrality

The urban water companies have been or will be made subject to competitive neutrality arrangements including a tax equivalence regime and the requirement to pay commercial dividends. The intention of these changes is to remove any advantages these firms have arising from State ownership, so as to provide accurate incentives for investment and fair outcomes for private businesses.

Community Service Obligations

The water reforms have also involved the use of Community Service Obligations to ensure equitable outcomes. Water and sewerage services are delivered at less than full cost to pensioners (who receive concessions of up to 50% of service and water sewerage charges). The Water Relief Grant Scheme provides one-off assistance to eligible domestic customers who are unable to pay their water and/or sewerage bills due to a temporary financial problem. A rebate of up to \$260 a year is available on the fixed water and sewerage charges of not-for-profit organisations in the fields of education, hospitals or nursing care, religious worship, charity, outdoor sporting or recreation activities, and war veterans organisations.

Benefits of the reform program

The Government's reform program has provided sharper incentives for the industry to reduce costs while becoming increasingly focused on meeting customers' requirements.

Benefits from the reform program include:

- ◆ *by the year 2000, about \$50 million per annum in increased agricultural production arising from water trading;*
- ◆ *a thorough environmental assessment is being undertaken of each water system, leading to recommended flows to be allocated for environmental purposes;*
- ◆ *cost savings of around \$150 million over the first five years of disaggregation, while the ORG reports service standards had generally improved on the pre-disaggregation level; 2*

- ◆ *the percentage of the non-metropolitan population whose water meets bacteriological standards has increased to 58%, from 27% in 1992-93. The target is full compliance by 1999-2000;*
- ◆ *the rural water authorities are on track to be sustainable by achieving business cost recovery by 2001. Currently 39 out of 54 districts have reached full cost recovery; and*
- ◆ *all water businesses now have customer consultative committees and internal dispute handling processes in place.*

The improved industry structures and accountabilities which are now in place will maintain pressure on the industry to further improve its performance.

The single exception is an increase in water supply interruptions in 1996-97, which the ORG attribute to the unusually hot summer.

The most convincing evidence of the benefits of the water reforms is that the vast majority of Victorian properties are now paying less for their water and sewerage services, while the quality of the service provided has been at least maintained and, for many Victorians-particularly those outside Melbourne-substantially improved. Through the widespread use of customer consultative committees, customers now have an enhanced capacity to influence their water suppliers. Also, the environment is being protected through the specification of environmental flows as a precursor to water trading.

5.113 The Australian Conservation Foundation has a different view of the reforms in the water industry in Victoria over the last few years and in its submission lists the concerns which the ACF has of the management of the environment, in particular, water in that State:

....while Victoria has "led the pack" in the reform of rural water prices since the late 1980's, Victoria's approach is still deficient:

- questions of pricing and resource use and access rights are resolved in the absence of opportunities for public debate, input and scrutiny;
- a number of issues critical to pricing decisions in our view (eg the financial costs of environmental and related externalities where cause and effect can be attributed) are consistently regarded by Victoria as being extraneous to pricing decisions;
- the riverine "environment" is expected to raise its own works funds via temporary sales of environmental water; an arrangement which both avoids the need for core environmental water, and assumes that the "environment" doesn't need its water;
- refurbishment of water infrastructure is invariably paid for from a combination of State and Commonwealth funds;

- in recent years enormous accumulated debts have been written-off by the Victorian Government to relieve irrigators of this additional financial impost;
- debt guarantee fees have never been required;
- state-owned rural water corporations, which are administered by boards drawn largely from their irrigator customer base, are not subject to independent environmental regulation; they are their own regulators.⁵⁵

5.114 It would be unfair to say that policy changes have not occurred to benefit the environment and as with the wider economy, National Competition Policy is but one element of the changes which are proposed or occurring:

In the past, water has not been treated as an economic resource which should be charged out at its full cost. It has been used to promote regional development and closer settlement in semi-arid inland areas of Australia through the development of irrigation schemes. Governments usually supplied the capital to establish the irrigation infrastructure out of consolidated revenue, and water charges paid by irrigators often did not meet the costs of delivery. Also, the full cost of providing urban water and sewerage services and rural domestic and livestock supplies were not recovered from users.

In the 1990's, water policies have changed in a major way. The focus has moved to emphasise resource sustainability rather than infrastructure or regional development.

In 1994, CoAG developed a National Agenda for Water Reform. Key features of this Agenda include:

- Introduction of commercial principles to the water industry, including privatisation or corporatisation of utilities;
- Separation of water wholesale and retail supply organisations with performance monitoring at both levels;
- Separation from supply responsibilities of regulatory functions that protect the public interest in the way the resource is managed, allocated and priced;
- Consumption-based pricing (not property taxes) set to cover all costs of water supply;
- Establishment of water rights as a separate property right from the land;
- Markets for the free trading of water rights separately from land;

- Reduction of cross-subsidies in water provision;
- Specific water allocation to the environment;
- Natural resources management through integrated catchment management; and
- Public consultation.

.....Despite these developments, the natural resource and environmental aspirations of the CoAG Agenda are far from being realised. Environmental water allocation is accompanied with varying statutory force, and the cap on Murray-Darling Basin diversions is yet to be fully implemented.⁵⁶

5.115 Structural adjustment and the pace of change is as important an issue in the environmental sector as it is in the wider economy. The burden of cost recovery is of major concern to rural users of water and whilst it is recognised that cost recovery sends the right kind of economic message to users of water and will ensure that the resource is used with diligence, care must be taken to limit structural shock. An equitable balance must be achieved.

Increased water charges have the potential to significantly reduce farm incomes in some regions. Irrigation farms are often small and were designed to allow as many families as possible to be settled on the land. Many were established with the aid of government subsidies. In some areas this has contributed to the poor financial performance of farms, social decline and increased environmental impacts. Structural adjustment problems such as these must be resolved.

A study of the lower Murray-Darling Basin estimated that a move to full recovery of water supply costs would reduce gross margins by 6%. One response has been to separate the right to use water from the right to use land, as proposed by CoAG.... This has been estimated to reduce the net loss to farmers from increased water charges to 3%.⁵⁷

5.116 The Committee received conflicting evidence about the value of tradeable water rights as a mechanism of improving the environment. Prof McKay of the University of South Australia has found that tradeable water rights have not always produced the outcomes sought by management authorities, rather sometimes the opposite:

56 J F Thomas, *Water and the Australian Economy*, A joint study project of the Australian Academy of Technological Sciences and Engineering and the Institution of Engineers, Australia, Community Summary, April 1999, prepared by Bryony Bennett, April, 1999, p 6.

57 J F Thomas, *Water and the Australian Economy*, A joint study project of the Australian Academy of Technological Sciences and Engineering and the Institution of Engineers, Australia, Community Summary, April 1999, prepared by Bryony Bennett, April, 1999, p 15.

...the TWE has increased the demand for water in the Murray-Darling system. Water that was going down the river unused.....has now been mobilised because it suddenly has a value. The long term outcome of that is that the Murray-Darling has had to be capped because of the increased use.

...In some areas there are the very distinct advantages of tradeable water, but whether or not you are encouraging everybody by TWE to move into more efficient irrigation technologies is debatable...⁵⁸

5.117 The Australian Conservation Foundation, considers that it is the application of NCP that is the concern:

...a correct application of NCP will help to reduce environmental pressures, particularly where new water resource developments are involved. Specifically, the CoAG Water Resources Policy requires that all new schemes, or extensions to existing schemes, be both economically viable and ecologically sustainable. It also requires a range of other environmental reforms.⁵⁹

5.118 Other evidence available to the Committee advocates the ability of environmental bodies to trade in water as well.

Improvements in the efficiency of on-farm water use and water delivery are essential to enable transfers of water to more productive uses and to the environment. Wide differences exist in the value added per unit of water used, and in the amount of water used per unit land area, both regionally and between irrigation enterprises. Relatively few farmers use any objective method of irrigation scheduling, but this will become more feasible where open channels are replaced with piped supplies.....

Governments have yet to accept that it will be more efficient and effective if environmental institutions are allowed to trade water. Trading by environmental custodians will allow the possibility of increasing resources allocated to the environment and enable environmental water to be available for urgent productive purposes in times of drought. Unless such a mechanism exists, savings in water use from improved efficiency will tend to be distributed to other farmers.⁶⁰

5.119 These are specialist issues beyond the expertise of the Select Committee. However, what would seem to be a common theme is the responsibility of NCP managers to ensure that the public interest test is as broad, all encompassing and frank and open as possible to take into account the competing demands of all parties.

58 Assoc Prof McKay, University of South Australia, Committee Hansard, 1 November 1999, p 885.

59 Submission No 88A, ACF, p 1.

60 J F Thomas, Water and the Australian Economy, A joint study project of the Australian Academy of Technological Sciences and Engineering and the Institution of Engineers, Australia, Community Summary, April 1999, prepared by Bryony Bennett, April, 1999, p 15.

Inappropriate application of the public interest test

5.120 The Committee is concerned overall that there is inadequate and narrow application of the public interest test in the NCP process and a lack of public accountability of decision making which contributes to suspicion and distrust of government motives. The Committee does not seek to add a cost burden of additional reporting, but rather seeks to ensure a transparency of decision making and an open and full honest reporting of the assessment of the public interest in these cases.

The AGO believes that the scope and application of the public benefit and public interest test applied under the auspices of National Competition Policy (NCP) are key factors in determining socio-economic consequences of NCP. Presently, the vigour with which the test is applied differs between jurisdictions and regulators and many participants appear unaware of governments' commitment to incorporate Ecologically Sustainable Development principles and objectives in policy making processes.⁶¹

5.121 The Australian Greenhouse Office (AGO) outlined a number of concerns in its submission relating to the consideration of public benefit in the development of new infrastructure proposals, particularly in electricity. The submission notes the changes that have been wrought by NCP to the previously State-owned and controlled system and the lack of emphasis on environmentally friendly alternative sources of power.

Under vertically integrated regimes, electricity systems were developed on a jurisdictional stand-alone basis within large centrally planned systems. State owned businesses were responsible for planning, developing and implementing new generation and network upgrades. This allowed for a high degree of jurisdictional political interference in the decision making process (eg Collie Power Station, WA) and minimal consideration of the broader national interest.

The cost of any expansion was arbitrarily spread over all users with those directly benefiting not bearing the full cost of providing the service. This was due essentially to there being no competition within each jurisdiction and all costs, generation, transmission, distribution and metering were arbitrarily averaged throughout the state and bundled into one bill for users. The lack of competition meant there was minimal emphasis on technical efficiency in providing the service, (eg uneconomical grid extensions in Queensland). This ethos has resulted in the present structure of large, generally coal fired generators sited at the fuel sources transmitting electricity over large distances with associated, large transmission losses.⁶²

61 Submission No 208, Australian Greenhouse Office, p 1.

62 Submission No 208, Australian Greenhouse Office, p 1.

5.122 The Australian Greenhouse Office considers that the current management of the National Electricity Market and the interpretation of the public interest test continues to be "narrow" and without consideration to environmental issues.

The NEM is managed by the National Electricity Market Management Company (NEMCO) which controls the centrally coordinated dispatch process and the spot market. However, the advent of the NEM has not resulted in a consistent methodology for assessing regulated network augmentation and extension proposals. Some proposals are assessed under a net customer benefit test and others under a net public benefit test, neither test takes account of externalities such as green house gas emissions.

Network planning in the NEM is undertaken by the wires businesses that service a particular area. Transmission Network Service Providers (TNSP) must conduct an annual planning review with each Distribution Network Service Provider (DNSP) connected to their transmission network. Where the necessity for augmentation or extension is identified by this review the relevant service providers must undertake joint planning to determine plans for consideration by code participants and interested parties. The Network Service Providers must carry out economic analysis of the possible options to identify the option that maximises the net benefit to customers.....

The AGO has argued, unsuccessfully, for externalities such as a cost for greenhouse gas emissions to be included in any network augmentation or expansion test criteria. The AGO, in a submission to the Australian Competition and Consumer Council [sic Commission] (ACCC) review of criteria for a public benefit test for new interconnectors and network augmentation, argued that if externalities were not to be included then to avoid confusion the test should be called something other than a 'public benefit test'. Following this submission, the ACCC subsequently changed the name of the test to the 'regulated assets test', or 'market benefit test' which assess the benefits which accrue to the market.

The AGO believes that the application of such tests, as opposed to a public benefit test that incorporates externalities, is providing for suboptimal results. Moreover, many investments are proposed and analysed by the Network Service Provider that stands to benefit from the proposal. This can result in further inefficiencies.

There are examples of Network Service Providers recommending network augmentation, on the basis of a biased assessment process that fails to examine realistic alternatives.....At present the broader social impacts of augmentation and expansion are not examined and the test for expanding regulated assets concentrates on financial benefits to generators and customers. This may be due, not to a failure of NCP, but from the problem of inconsistencies between the different regulators and jurisdictions who oversee its implementation.

The AGO is of the opinion that a public benefit test, which incorporates greenhouse gas emission externalities, is necessary to ensure that environmental considerations are factored into electricity market investment

decisions. The ACCC contends that the public benefit test can only include known environmental costs arising from government legislation.⁶³

5.123 The Committee was particularly concerned about evidence it received in Perth, WA in relation to the tendering process for the supply of power to Derby and surrounding areas. The group which had tendered a tidal –power option for the supply of the power relayed their misgivings to the Committee about what they saw as bias toward conventional methods of generation and a lack of consolidation of environmental impacts and long term solutions.

Senator Murray – If another plank of competition policy is independent, objective appraisal on a fair and informed basis, you are suggesting to this committee that the way in which the tender process is constructed, the people who manage it, and the way in which it is opened and adjudicated does not meet the tests of independence, objectivity or fairness?

Mr Wood – Yes, that is my view. If Tidal Power had not been one of the bidders and the basis was purely a choice between, let’s say, LPG and LNG, it would be purely an Energy matter. But I think the very introduction of a renewable project with spin-off benefits for the region has created a major question mark in that selection process. I know that the chairman of the Kimberley Development Commission, Peter McCumstie, made representations that the region should be represented on that assessment panel, and that request was rejected. His presence would have ensured the broader view being taken in that process.

5.124 Resource management - particularly infrastructure management - is undergoing considerable change from public funded subsidised systems to systems cognisant of the costs of provision in terms of construction, supply, transmission and environmental impact. The changes are fundamental and cannot be adopted 'overnight'. Nevertheless, the Committee is concerned at the apparent lack of co-ordination in the reform processes affecting the environment, particularly with respect to water, forests and energy. As noted previously, if rigorously applied in conjunction with ESD principles, many of the 'systemic' factors which result in environmental degradation could be overcome.

Recommendations

21. *That in reviewing legislation and arrangements which involve environmental impacts, Governments should ensure that a broad interpretation of the public interest test is undertaken, including an “account” of environmental effects of changes to regulations or failures to change.*
22. *That greater rigour be applied to ensuring that the processes of reviewing legislation and assessing the public interest in areas involving impacts on the environment are as open and transparent as possible.*

63 Submission No 208, Australian Greenhouse Office, p 2.

23. *That the NCC work with Commonwealth and State environmental agencies to ensure that reviews of related legislation are co-ordinated. The aim of this is to eliminate anomalies in legislation and regulation that may lead to environmental degradation.*
24. *That the government commission a review of subsidies and other incentives to use publicly owned natural resources which are inhibiting private investment in competing products, to the detriment of the environment.*
25. *That jurisdictions ensure, that in implementing the public benefit test, environmental 'externalities', including greenhouse gas emissions, are appropriately considered.*

Summary

5.125 The Committee is sympathetic to the concerns of the community that NCP and micro-economic reform are having adverse and perhaps unintended consequences. To this end, the Committee has recommended a number of key changes and actions in relation to the administration and implementation of the policy.

CHAPTER 6

THE IMPACT OF NATIONAL COMPETITION POLICY - RELATED ISSUES

The Productivity Commission has said quite clearly that there are massive social changes occurring in Australia. The rural summit identified those massive social, demographic and economic changes. If governments continue to ignore them, continue not to assist communities through the process of change and simply say, 'We can fix your problems by getting rid of national competition policy,' they are being unfair to their constituents. That, I guess, is the big message that perhaps can come out of this committee.¹

Introduction

6.1 During the course of the inquiry the Select Committee received considerable evidence about the administration and implementation of NCP and the practical application of the policy which goes to concerns about good, equitable and efficient governance. The Committee reported on most of these issues in the Interim Report, however, no conclusions or recommendations were made at that time. The Committee is of the view that these issues are of such importance to the success of the policy, that the issues have been discussed again in this chapter and possible strategies proposed to alleviate the concerns expressed. These issues include:

- ◆ The administration of the policy;
 - administrative structures;
 - the lack of oversight by CoAG;
 - administrative Functions;
 - the dual role of NCC;
 - the lack of performance monitoring and data gathering on the impacts of NCP (examined in Chapter 4);
 - administrative activity;
 - the unco-ordinated application of NCP (examined in Chapter 4);

1 Mr Samuel, Committee Hansard, Melbourne, 1 November 1999, p 868.

- the perceived lack of transparency in the review process (examined in Chapter 4);
 - the cost to participants in the review process;
 - the lack of time limits in relation to the declaration of access regimes;
 - the lack of obligation on NCC to conduct public consultation;
- ◆ Infrastructure Access and Competitive Neutrality Issues;
- declaration system;
 - intermodal competition in transport.

Administration

6.2 Throughout the inquiry, the two major themes heard in evidence and produced in submissions were the inappropriate application, or lack of application, of the public interest test and the administration/implementation of the policy. Where the policy is fully understood and processes are open and transparent, people would seem to have little problem in implementing the policy. The ‘patchy’ and disingenuous application of the policy is causing confusion and hardship in the community. There appears to be at least a perceived lack of consistency and fairness of treatment and co-ordination across industries, across sectors, across regions and between states.

6.3 At the higher levels of administration there appears to be a good understanding that NCP is a tool that Governments can use to facilitate the efficient use of resources and to achieve the communities outcomes. However, as administration becomes more removed from the central area of the NCC, implementation seems to become increasingly more doctrinaire or even seen as an excuse to realise other policy objectives related to micro-economic reform.

Lack of oversight by CoAG

6.4 Individual Governments are responsible for their own timetables for the introduction of NCP, however much of this process is driven by their obligations in relation to the Implementation Agreement and the tranche payment process. By 2000 all states agreed to review, and where appropriate, reform all existing legislation which restricts competition. About 2000 separate pieces of legislation have been identified for review. Individual jurisdictions are able to interpret the broader provisions of the Act and the Agreements according to their situation and priorities.

6.5 This approach had the objective of enabling the Commonwealth, states and territories to tailor the implementation of NCP to their individual needs whilst still ensuring a broad level of reform in key infrastructure areas - water, gas, electricity and roads. Reform is therefore proceeding on a number of ‘fronts’:

- through the review and change or removal of restrictive legislation;
- through the reforms in major infrastructure to which each state is obligated under the Agreements; and
- through the processes of ensuring that government businesses are at least competitively neutral, which in some States has been interpreted as corporatisation, privatisation or outsourcing of functions.

6.6 The NCP was agreed between the Commonwealth, State and Territory Governments under the auspices of Council of Australian Governments (CoAG) in 1995. Under the structure agreed in CoAG, the NCC would be subject to CoAG oversight and determination of work priorities.

6.7 The Committee sees NCP as a policy that has all the governments in Australia recognising that interventionist policies increasingly have ramifications beyond their state borders. Cases in point are, the dairy industry, inappropriate pricing of water leading to overuse and salinity problems, and, developments in infrastructure leading to intermodal competition.

6.8 CoAG has not met formally to consider NCP related matters since November 1997, when an agreement on gas was signed. Accordingly, the NCC's basic work program has been the program established in 1996 and under the Agreements. The Committee is not being critical of the NCC prosecuting the agenda set in 1996, but does note that the reform agenda has both moved on and exposed some significant adjustment problems that governments have not addressed by way of review, and, where necessary, altering the NCC's work priorities.

6.9 The disquiet concerning the lack of on-going supervision of the NCC's activities and the attendant accountability questions this raises was evident throughout the length of the inquiry. For example, the Queensland government view of the NCC's work was addressed by Mr Bruce McCallum, Director, Office of The Treasurer:

It is fair to say that the Queensland government supports the principles underlying the NCP reforms, particularly the application of the public benefit test, but has some concerns about the application of the policy, particularly the way the National Competition Council has been undertaking its role. one example is the NCC's expansive and liberal interpretation of the CoAG water agreement and another is the NCC's rather narrow interpretation of community service obligations and what we regard as perhaps a lack of recognition of the legitimacy of CSOs as a policy tool of government.²

2 Mr B McCallum, Director, Economic Performance Division, Queensland Treasury, Committee Hansard, 7 April 1999, p 208.

6.10 In the South Australian Government Submission, Premier John Olsen noted that he had sought to put NCP on the agenda for the 1999 Premiers' Conference, saying that there was a 'need for adoption of a more balanced approach to implementation.' The SA Submission goes on to note:

The NCC brings its own ideological position to consideration of policy outcomes and should not seek to dictate those outcomes to Governments, particularly in legislation review where final decisions on reform outcomes must rest with elected Governments. The NCC's primary focus should be to ensure that appropriate processes have been adopted in the implementation of NCP requirements, and that due consideration has been given to the public interest in the reform decisions taken by Governments.....

The assessment process must be sufficiently flexible to account for local issues: national uniformity in market arrangements was not an objective of the NCP reform package....³

6.11 The NCC is to be reviewed in 2000 under the terms of the implementation Agreement. In the Committee's view, there is a need for oversight arrangements to be reviewed by the parties to the Agreements as soon as practicable.

Recommendation

26. *That as a matter of urgency, CoAG should determine and implement the post 2000 agenda for NCP.*

6.12 The Committee agrees with the view expressed by the Productivity Commission, that whilst governments may be critical of the NCC, they can find the NCC's stance privately beneficial because it permits issues to be addressed by a third party. Notwithstanding this, the Committee has some sympathy with the South Australian government view that the NCC needs to be given direction and advised to find a better balance between its advisory and 'watchdog' roles. Consequently, the Committee believes that a fair proportion of the blame for the lack of co-ordination of the administration of the policy is due to the lack of guidance by Heads of State – the failure of CoAG to regularly meet, discuss issues of mutual concern and determine priorities and give directions to NCP units, the NCC and ACCC. Because CoAG has not met to consider NCP generally since 1996, the NCC lacks continued direction, accountability and an independent assessment of its workplan.

Oversight of NCC

6.13 At a hearing in Melbourne, questioning by Senators Lightfoot, Murray and Mackay about how the 'public interest' should be determined and those hard questions

3 Submission No 211, South Australian Government, p 3.

about possible exceptions answered, drew various responses. Mr Nettle of the Australian Local Government Association noted:

To me, there is the economic rationalist approachand there is a rational economics approach which is basically a welfare approach. You say to yourself that the pluses we want are lower infrastructure costs, lower communication costs, lower power costs, so people are better off, but we also have to look after human beings and the welfare of people and the welfare of communities for as long as those communities remain. That, Senator Mackay, is really the issue you were dealing with-how you actually go about doing that.⁴

6.14 Although each party to the Agreements is free to determine their own agenda for the reform of legislation and public monopolies, evidence suggests that the process is being driven by the tranche payments from the Commonwealth to the states and territories. These payments are linked to the requirement under Clause 5(3) of the Competition Principles Agreement for each party to have developed a timetable by June 1996, and where appropriate, reform of all existing legislation that restricts competition by the year 2000. These reviews are well under way. The Agreement to Implement the National Competition Policy and Related Reforms, clearly states:

The Competition payments to be made to the States in relation to the implementation of National Competition Policy (NCP) and related reforms will form a pool separate from the FAGs pool and be distributed to the States on a per capita basis. These Competition Payments will be quarantined from assessments by the Commonwealth Grants Commission.

If a State has not undertaken the required action within the specified time, its share of the per capita component of the FAGs pool and of the Competition Payments will be retained by the Commonwealth.

Prior to 1 July 1997, 1 July 1999 and 1 July 2001 the National Competition Council will assess whether the conditions for payments to the States to commence on those dates have been met.⁵

6.15 Professor John Quiggin addressed this point:

I think it is really an agenda that primarily came out of the federal bureaucracy, and the state governments in particular were locked in by the process of so-called compensation payments, under which the federal government undertook to make payments to them conditional on essentially federal agencies, like the National Competition Council,

4 Mr Nettle, Australian Local Government Association, Committee Hansard, Melbourne, 1 November 1999, p 849.

5 Agreement to Implement the National Competition Policy and Related Reforms, 11 April 1995., p2.

judging that the states had made adequate progress in implementation of the policy.

I think that is a bad way of undertaking policy. It is against both the general principles of democratic accountability and the proper division of responsibilities within a federal system of government. Looking at the content of the national competition policy agreement, it follows from that that I argue that this system of conditional payment should be abandoned and that the payments promised to the states under national competition policy should be made unconditional from now on.⁶

6.16 The Committee is concerned that where responsibility for administration/implementation of the NCP has, in all jurisdictions, been placed in treasury or premiers portfolios, the officers responsible will 'go for the money' under the tranche payments. For example, in Western Australia, the Treasury has responsibility and the Regional Development portfolio has a role in NCP: but Mr Morgan of the Regional Development Council said in response to Senator Margetts query about implementation:

My view is that the state Treasury is probably like all Treasuries around Australia. It tries to maximise its income and it takes as little notice of the social impacts of its policy as possible.⁷

6.17 As identified in the interim report, this view of the role of treasury agencies is reinforced when considering the application of funds paid under the tranche payments. Only Queensland has made a substantial attempt to compensate areas for the costs involved in the application of NCP. The Queensland position was explained by Mr McCallum, Director, Economic Performance Division, Queensland Treasury:

The Queensland government has agreed to provide \$150 million over five years, commencing in 1997-98, to assist local governments to meet the costs of NCP reviews and to provide local governments with an incentive to adopt reforms, especially competitive neutrality measures. That money is sourced from the competition payments or the \$750 million component of the payments that Queensland receives from the Commonwealth government.⁸

6.18 In making these funds available the Queensland government has tied them to the performance of NCP reviews. The breakdown in funding was explained by Mr D Mullins, Chief Executive Officer, Esk Council:

6 Prof J Quiggin, Committee Hansard, 7 April 1999, p 196.

7 Mr S Morgan, Chairman, Regional Development Council (Western Australia), Committee Hansard, 17 May 1999, p 319.

8 Mr B McCallum, Director, Economic Performance Division, Queensland Treasury, Committee Hansard, 7 April 1999, p 209.

.. The first component is training, and that is being managed and serviced by the Local Government Association of Queensland and also the local government department.

...

Out of that \$150 million, our council has been earmarked to receive \$35,000 for review and \$487,000 for implementation. As I said before, we have already undertaken the review and we will receive that \$35,000. Obviously, it is possible over the next four years that we will be paid the balance of the \$487,000 in full. But it is also possible that we will not receive even half of that, because the onus is on us to see what we do over the next four years. That \$487,000 is for activities such as a review of our roadworks, water and sewerage and also various other business activities. In the water component, we are looking very closely at our water charging structure.⁹

6.19 The Western Australian Government has also provided per capita funding to local governments but the size of the payments is of questionable value. Senator Lightfoot sought some explanation of State payments to local governments in Western Australia from Mr Brown of the Shire of Jerramungup:

We got a cheque a couple of weeks ago from the state government. That was our first sign of any money back to the local areas through the National Competition Policy.

Senator LIGHTFOOT - As welcome as that was, did that contra any losses or potential losses for you up to the next tranche of 1999-2000?

Mr Brown - Only minor. We got \$2,000-odd dollars.

Senator LIGHTFOOT - Is that all?

Mr Brown - Yes, that was all. It was on a per head of population basis, and it was 80c a head, or something.¹⁰

6.20 The reviews of legislation are determined by agreed timetables with the NCC and largely driven by the NCC 'watchdog' as it reports progress/or lack of it, to the Treasurer to enable him to make decisions about the level of compliance of each State under the Agreement and therefore its level of entitlement. The tranche payment funds are not inconsiderable and as such, are a fairly powerful incentive to conform. Some states have attempted to invoke their rights to maintain restrictive arrangements and have run the gauntlet of the NCC which has recommended on at least two occasions that a state not receive its full entitlement. See Table 2 below:

9 Mr D Mullins, Chief Executive Officer, Esk Shire Council, Committee Hansard, 8 April 1999, p 260.

10 Mr M Brown, Chief Executive Officer, Shire of Jerramungup, Committee Hansard, 17 May 1999, p 311.

TABLE 2: NATIONAL COMPETITION POLICY TRANCHE PAYMENTS (a)

Year	Per Capita (b) State	Per Capita (b) Local Govt (c)	Per Capita (b) Total	Per Capita (b) Total	Competition Payment		State & Local Government Total Payments	
	\$m	\$m	\$m	1994-95 Prices \$m	\$m 1994-95 Prices \$m	\$m 1994-95 Prices \$m	\$m 1994-95 Prices \$m	
1997-1998	194	14	209	186	219	* 200	428	386
1998-1999	392	29	420	365	226	200	646	565
1999-2000	604	44	647	546	465	* 400	1113	946
2000-2001	829	60	890	729	479	400	1369	1129
2001-2002	1070	78	1148	914	739	* 600	1888	1514
2002-2003	1327	97	1423	1101	761	600	2184	1701
2003-2004	1600	117	1716	1290	783	600	2499	1890
2004-2005	1890	138	2028	1481	806	600	2833	2081
2005-2006	2198	160	2359	1675	829	600	3188	2275
TOTAL	10104	736	10840	8286	5307	4200	16147	12486

* Indicates year in which each additional payment is made

(a) Estimates.

(b) Population growth is assumed to be about 1.1% from 1997-98 onwards.

(c) Reflecting the existing link between the respective pools.

Source: House of Representatives Standing Committee on Financial Institutions and Public Administration, "Cultivating Competition", Report of the Inquiry into Aspects of The National Competition Policy Reform Package, (Australian Government Publishing Service: June 1997) p. 131

Note: Table does not reflect changed payment levels due to the GST.

6.21 Senator Murray asked what should be retained in our society, regardless of economics, regardless of efficiencies? Mr Davis of the Australian Chamber of Commerce and Industry replied:

I think Senator Murray has basically asked a political question, and it is the role of the parliament to answer those exceptionally high-level policy trade-offs. I think that publicly funded officials or those from the private sector who may lead such groups cannot be asked to answer those sorts of questions because it is probably beyond their remit. I think they can advise; I think they can implement legislation, but I think those big framework issues really fall into the domain of the parliament.¹¹

6.22 The Committee is in agreement that these issues are not within the purview of the NCC and other administrators and was repeatedly reminded at a forum in Melbourne that it is the concern and responsibility of civic leaders – politicians duly elected - to make decisions for the good of the majority. However, politicians cannot make such decisions without input from the community and expert administrators.

I am going to flick straight back to you as senators what we really do about the future of national competition policy. I would perhaps urge you though, in doing so, to say, 'Do not throw the baby out with the bathwater.' There are problems with national competition policy, and all those problems you mentioned, Senator Lightfoot, are very real in rural and regional Australia.¹²

6.23 The Committee considers the decision to compensate the states and territories for loss of income from government owned business assets that are opened to competition under competitive neutrality and to compensate for transitional costs incurred in implementing NCP, was an appropriate decision, given the impacts that are becoming evident. However, it is of the view that the competition payments should be used as incentive rather than punishment.

6.24 The Committee considers that more work is required to identify the losers and those who may need specific assistance with transitions under NCP. Part of this work will be to address what the Productivity Commission has identified as the lack of available data that is hindering the assessment of the value of NCP at regional and local levels. Until this lack of data is addressed, it will be difficult to properly assess the benefits of any of the reforms proposed under NCP.

6.25 The view of the Department of Agriculture, Fisheries and Forestry – Australia, where it identifies the need for the application of NCP to be considered in

11 Mr B Davis; Director, Australian Chamber of Commerce and Industry Committee Hansard, 1 November 1999, p 847

12 Mr Nettle, Australian Local Government Association, Committee Hansard, Melbourne, 1 November 1999, p 849.

the context of the transition of an industry moving towards the end objectives of NCP, is further justification for such a requirement:

AFFA believes that transitional arrangements would facilitate the speedy adoption of reforms without undue cost. Structural adjustment assistance would be useful in this regard. The competition payments to the States and Territories provide an incentive to undertake reforms and should be used to provide structural adjustment assistance.¹³

Recommendation

27. *That the issue of the lack of data and information on the impacts of NCP be addressed in two ways:*

- Governments should ensure information is gathered about structural adjustment needs in various sectors. Governments could commission specific studies or obtain this information from the NCC's tranche payment assessment process from the States and Territories and on advice from the States and Territories. Local Government should be encouraged to feed into this process with its own statistical information. Governments should commission studies where appropriate.
- Where necessary, the Productivity Commission, under reference from the Commonwealth Treasurer should be directed to undertake specific studies where major impacts are envisaged and transitional arrangements/structural adjustment may be desirable: eg, a major agricultural industry.

The dual role for the NCC - overseeing the States' reviews and recommending tranche payments

6.26 Under the Agreement to Implement the National Competition Policy and Related Reforms, the NCC is to assess whether the conditions for the payments to the states and territories of the tranche payments have been met.

6.27 Concern has been expressed about the dual role of advice and assessment held by the NCC. In its submission to the Committee, the South Australian Government noted:

The NCC has several roles conferred on it by the agreements and related legislation. Most emphasis to date has been placed on the assessment role, and in discharging that function the NCC has also sought to provide advice to jurisdictions on NCP issues, and

13 Department of Agriculture, Fisheries and Forestry – Australia, Submission No 190, p29.

increasingly to become an active and vocal participant in the policy development process.

Care needs to be taken to ensure that conflicts do not emerge between these various roles of the NCC, and that the NCC observes protocol in its dealings with policy development bodies such as Ministerial Councils. The June 1997 report of the House of Representatives Standing Committee on Financial Institutions and Public Administration ('Cultivating Competition') recommended that CoAG should evaluate the dual advisory and assessment roles of the NCC to determine if both roles are appropriate.¹⁴

6.28 The Queensland Parliament has also registered its concern over the dual role of the NCC and expressed its unanimous view on 11 November 1998, when the House agreed to the following motion:

This House supports the Beattie government's commitment to apply a rigorous Public Benefit Test in any application of the National Competition Policy in Queensland.

This House considers that this test must give full weight to issues including jobs and job security, social welfare and equity considerations, health and safety and regional development as well as the interests of consumers.

Further, the House supports the use of Community Service Payments to ensure the maintenance of quality services to people in regional areas and the right of the State Government to identify and determine such Community Service Obligations.

Further, the House condemns the views emanating from the National Competition Council and calls on the Federal Government to constrain the powers of this unelected body in order that it not be able to slash millions of dollars from State Government Budgets with potentially devastating effects on employment and services particularly in rural and regional areas and calls upon the Government to negotiate changes to the National Competition Policy to take into greater account the adverse social implications of these policies and that furthermore, responsibility for the administration of the National Competition Policy be transferred from the National Competition Council to the Council of Australian Governments.¹⁵

14 Submission No 211, South Australian Government, p 3.

15 Queensland Government Hansard, 11 November 1998, p 3025.

6.29 The Productivity Commission also received concerns from the community about the dual role of the NCC.

6.30 Many participants were unaware that the NCC is an advisory body. Rather, it was commonly perceived to be undermining the sovereign rights of individual jurisdictions, holding the 'purse strings' and deducting payments from State governments based on its own ideological predilections.

6.31 The Committee accepts these concerns and, to some degree, does share them. However, there does not seem to be a ready solution to the concerns raised about the functions of the NCC. To remove the functions of assessing the reform progress and recommending on the tranche payments, would, in the Committee's view, emasculate the Council and leave it 'toothless' and without major focus. However, the Committee agrees with the Productivity Commission that the NCC should no longer be required to conduct legislation reviews.

NCP review costs

6.32 The issue of costs has been raised in two contexts. First, the costs of seeking exemptions for conduct under the TP Act. Officers of the NSW Department of Agriculture have stated:

...during reviews of SMAs (Statutory Marketing Authorities) undertaken in NSW, the assertion that the Trade Practices Act is the appropriate regulatory mechanism for anti-competitive market behaviour has been vigorously disputed by agricultural producers and producer groups. The basis for these assertions is that recourse to trade practices legislation to deal with anti-competitive behaviour by buyers is effectively not available to small business operators, such as most agricultural producers. They consider that access to the legislation is denied through:

- high costs associated with bringing a case;
- a lack of skills to bring about a case, prepare submissions and present evidence; and
- most significantly, potential retaliatory action by buyers if a case is brought, whereby those producers bringing the action will be 'frozen' out of the market altogether.¹⁶

16 Jennifer Nash, Margot Fagan and Scott Davenport, the Office of Rural Communities, NSW Agriculture, Orange, NSW, Some Issues in the Application of Competition Policy to Agriculture, paper contributed to the 41st Annual Conference of the Australian Agricultural and Resource Economics Society, Gold Coast, QLD, 22-24 January 1996, p18-19.

6.33 The costs associated with applying to the ACCC for exemption under the Act are considerable and beyond most individuals and small business operators. In its submission to the Committee, the Australian Doctors' Fund points out the powerlessness of small organisations and individuals in the scheme of things:

When confronted with the anomalies and imbalanced power relationships fostered by National Competition Policy the ACCC's defence is to point to the ability of all players to seek an exemption under the Act.

In reality the exemption process is costly. There are legal costs associated with the preparation of a case plus thousands of dollars worth of application fees not to mention the time required to have the application assessed. Hence the exemption process throws up substantial barriers for smaller independent players whilst large corporations with substantial legal arsenals have no such difficulties.¹⁷

6.34 Secondly, the approach taken by all governments in undertaking NCP reviews is that the party receiving the benefits of the exception from the full application of the Trade Practices Act, meets its own costs for the review. Under present arrangements the onus for demonstrating the public interest flowing from an exception is on the industry or party. The Committee has been repeatedly informed of the high cost associated with reviews under the NCP process. Mr Leutton of the Queensland Dairy Farmers Organisation explained the concerns his industry body had:

We have proven we have a public benefit. We were able to demonstrate in Queensland that \$65 million was the benefit to our regional communities by maintaining a farm gate price structure. In New South Wales, I think they demonstrated about \$75 million benefit. So, Senator Margetts, that is really where we are. We have been through that process. We have spent that money and we have had our 'win' - I might say - by maintaining those farmgate prices and supply management.

.....

I cannot give you the exact figures right now, but about \$75,000 was our component of that. You match that with the New South Wales component and they were slightly higher because they did some earlier research. I think we are looking at about \$200,000 from two organisations.

.....

17 Australian Doctors' Fund, Submission No 67, p 4-5.

That took a period of about 14 to 15 months for Queensland. We were about three to four months behind New South Wales in the sequencing of things. They took about the same time down there. It took a team of about a dozen people all up from both sides of the border. To answer Senator McGauran: that was for the organisation; it was not per farmer. It cost us a total of \$200,000 in total for the two organisations.¹⁸

6.35 Industry groups have incurred these costs as demonstrated by the evidence of WA local government representatives. The comments of Mr Fisher of the Shire of York were representative of views:

The compensation payments we got this year were about \$3,500, which was nice but would in no way address the sort of work that is needed to realistically tackle national competition policy in the local council.¹⁹

6.36 Queensland stands out as having made significant attempts to redress the costs of NCP on local government. The approach (noted earlier) of the Queensland Government was explained by Mr McCallum of Queensland Treasury:

The Queensland government has agreed to provide \$150 million over five years, commencing in 1997-98, to assist local governments to meet the costs of NCP reviews and to provide local governments with an incentive to adopt reforms, especially competitive neutrality measures. That money is sourced from the competition payments or the \$750 million component of the payments that Queensland receives from the Commonwealth government.²⁰

6.37 The Committee accepts that where benefits flow to a particular group under “excepted” marketing or regulatory arrangements the onus is on the groups to justify why the arrangements ought to stay in place on public interest grounds. However, consideration could be given to the cost of proving that public interest, where it is proven, being contributed to by the public because of the value realised from the arrangement.

6.38 Where industry and community groups fail to demonstrate any ongoing public interest for the excepted conduct or arrangements there may be less argument for assistance in meeting the costs. Conversely, however, the fact that the conduct or arrangements were originally undertaken with government backing and that the

18 Mr R Leutton, Chief Executive Officer, Queensland Dairyfarmers Organisation and New South Wales Dairy Farmers Association, Committee Hansard, 7 April 1999, p 224.

19 Mr E Fisher, Chief Executive Officer, Shire of York, Committee Hansard, 18 May 1999, p 447.

20 Mr B McCallum, Director, Economic Performance Division, Committee Hansard, 7 April 1999, p 209.

review has shown the public interest will be served by the application of NCP, there would appear to be a justifiable case for assistance in meeting costs of the review.

Recommendation

28. *That, where a case can be made for assistance in meeting the costs of reviews that community and industry groups are required to meet due to their involvement in prolonged or complicated industry reviews, such organisations should be able to apply to State and Federal NCP Units for financial assistance paid from the tranche funds on a discretionary basis (as determined by the State/Federal NCP Units).*

Time limits in relation to the declaration of access regimes and requirement to conduct public consultation

6.39 The Committee has heard evidence that the NCC has taken considerable time to consider certain proposals for infrastructure access and that public consultation has not taken place:

The operation of national competition policy could be improved ..[by] ..the inclusion of a limit by the NCC to make a recommendation on declaration of a service and certification of an access regime.....Inclusion of a time limit for the Commonwealth minister to make a decision on certification is also desirable...[and] would lead to a more transparent process. This would have avoided the situation where the application by the New South Wales Government for certification of a rail access regime has dragged on for over two years- -and still without a decision.

The House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform recommended in the Neville report that if a designated minister does not respond to an NCC recommendation for declaration, the service in question should be considered to be declared rather than not declared as under the current legislation. We support that recommendation....

More specifically in relation to rail, implementation of the other recommendations of the Neville report would greatly enhance the efficiency of the Australian rail industry, which should benefit more remote parts of the country. A requirement for the NCC to conduct a public consultation process on declaration and certification applications is desirable. While it currently does this, it is not obliged to.²¹

6.40 This has not been an issue except in the case of NSW rail access regimes and, the Committee understands there may have been some degree of complexity here. Nevertheless, it has sympathy with the idea of a time limit and is strongly in agreement that public consultation should be held in relation to access to public infrastructure facilities. It is not sufficient to claim that these are matters of commercial confidentiality between the parties concerned.

Recommendations

29. *That the Commonwealth Treasurer have the power to impose a time limit or direct the NCC to complete an access evaluation recommendation within a certain time frame. The Committee believes that to be any more prescriptive would have the potential to hasten what may be a very complicated and delicate investigation.*
30. *That a public consultation process be mandatory in relation to applications for access to major public infrastructure facilities.*

Infrastructure Access, Regulation and Competitive Neutrality Issues

Quality and timely infrastructure is an essential element in modern economic development. The economic jury is still out, however, on the precise links between the level and timing of infrastructure investment and increased economic and social benefits in other sectors. Instead these benefits are assessed more readily from project to project than from sector to sector or jurisdiction to jurisdiction. It is generally regarded, however, that modern, competitively priced infrastructure services underpin economic growth, job creation, basic health and social amenity.²²

6.41 A number of issues concerning infrastructure have been raised in submissions and in hearings including:

- the lack of application of NCP principles to intermodal transport eg road/rail;
- the slowness of the application of NCP principles, particularly to the rail sector;
- inappropriate regulation of infrastructure services which have been corporatised or privatised; and
- unfair competition from public infrastructure bodies or lack of competitive neutrality in certain sectors.

22 Dennis O'Neill, AusCID, Infrastructure, The Challenge, in a paper to the Regional Australia Summit, 27-29 October 1999, Parliament House, Canberra, p 1.

Intermodal transport

6.42 Professor Laird of Wollongong University has highlighted a gap in the operation of NCP in that it appears to fail to recognise intermodal competition in transport infrastructure. He cites the ACCC's submission to the House Of Representatives Standing Committee on Communication, Transport, and Microeconomic Reform 1997-98 Inquiry:

Lack of competitive neutrality between rail and other transport modes, particularly roads, may be inhibiting the role of competition in achieving allocative efficiency among the different transport modes and hence greater integration in their use. To the extent that differences in government funding and user pricing approaches may be contributing to the absence of competitive neutrality, then an appropriate solution would be to tackle these distortions.

... The question the Committee could well ask is who is giving, or going to give, remedial attention to these distortions²³

6.43 Professor Laird is concerned that the NCP Agreements as constructed or administered, are impeding effective competition.

National Competition Policy in Australia fails to encourage effective competition between road and rail for general line haul freight. To remedy this situation will require a much more balanced approach to track upgrading and highway upgrading from the Federal Government, and, improved road cost recovery from heavy trucks....

The disparity between Federal funding of the National Highway System from 1974 to 1999 (now nearly \$18 billion in today's terms) and net funding of rail capital works (about \$1 billion as outlays less interest and loan repayments) has severely distorted competitive neutrality between road and rail freight operations.....²⁴

6.44 Professor Laird has pointed to the disparity between the treatment of road and rail infrastructure, particularly in the area of funding and he is concerned that the NCC is constrained by the NCP Agreements in its efforts to bring about competitive neutrality between these modes of transport. He cites in his submission, comment by a former federal treasurer to the House of Representatives Standing Committee on Communication, Transport, and Microeconomic Reform:

"I must say that what has come out of the inquiry to me is just how bad the system {rail} is. I am sort of shocked to realise just what a terrible state the railway system is. It is a national disgrace.

23 ACCC cited in Submission No 25, Prof Phillip Laird, University of Wollongong, p.1

24 Submission No 25, Prof Phillip Laird, University of Wollongong, p.1.

Obviously, if we are to have a viable industry, it needs a hell of an application of effort by government to bring that about, and a lot more than we look on track to be doing at the present time.²⁵

6.45 Other witnesses have raised concerns about the lack of emphasis on reforming rail or rather a lack of commitment to improving rail infrastructure and its management; and

The failure.....in entering the NCP agreements in 1995, governments did not call up or enter into any new commitments in terms of a rail reform agreement. I think that is the main failure we are seeing here. I do not know that governments have abandoned the notion of a single national operator of the interstate standard gauge system, certainly not the Commonwealth; but I do not think governments have been able to agree on how that sort of objective should be achieved.²⁶

Recommendation

31. *Given the significance of road and rail infrastructure, that transport be a matter for priority consideration by CoAG.*
32. *That the NCC address the issue of road-rail competition for freight as a matter of urgency.*

Regulation impeding competition and preventing upgrading

6.46 The potential for over-regulation to impede competitive systems and prevent for example, the upgrading of facilities, was another major concern of infrastructure providers. This would seem to be an issue for rail and water as well as electricity.

6.47 The common belief is that Competition Policy will bring falls in prices, however, it may be where infrastructure has been run down and requires substantial upgrading, price increases may be necessary to support that work or indeed as with water, provide the correct message to consumers about the true cost of provision of the service.

6.48 Alternatively, some infrastructure providers were concerned that unco-ordinated regulation was a factor in impeding competition. At a public hearing in Perth, representatives of Western Power Corporation drew the Committee's attention to the need for some co-ordination in the regulation of infrastructure service providers. They drew attention to what they believed was the 'silo approach' of government to regulation - different 'stacks' of regulation for different purposes. In response to a

25 Prof Laird, Submission No 25, p 5, quoting the Hon Ralph Willis.

26 Mr Willett, NCC, Committee Hansard, Melbourne, 1 November 1999, p 914.

question from Senator Murray about the support under NCP for consideration of alternative technologies, the Western Power representatives noted:

.....My concerns would be about maybe a silo approach to energy policy by the federal government. Let me explain it in this way. What we have is a very strong economic growth in this country. We are talking about a four per cent increase in economic growth which is going to drive population growth and it is going to drive more use of energy. Also we have put in a national market that has driven down the cost of electricity significantly, and made industry and boards very aware of their bottom line performance about putting more investment into those facilities. That, I think, is a danger.

But the other policy approach the federal government is following is in respect of the environment. It is basically saying, say, in the case of mandated renewables. 'We're going to make these mandatory on industry. We're going to put a surcharge on industry to bring renewables in.' So my concern is that it is the silo effect of policy that is not being integrated across federal government. We can really shoot ourselves in the foot as a country if we are not very careful about some of these taxes and surcharges that we are putting on industry that are going to impact on the competitiveness of the country...²⁷.

6.49 Some infrastructure suppliers have pointed to serious concerns about the regulation of 'unbundled' or privatised services in general:

Our concern is that the economic and social benefits from national competition policy, both those already achieved and those in prospect, are being jeopardised by the command and control regulatory regimes now being implemented and proposed in various jurisdictions. While we focus here on electricity, the issue is much the same for other regulated industries such as gas.

We consider that the regimes will have significantly detrimental effects on investment, industry development, economic efficiency and jobs. Many energy using industries will be adversely affected, including those in export industries.

Other stakeholders and interested parties have pointed to other adverse effects. For example, SG Hambros, which is part of the world's fourth largest bank, has concluded that the regime in Victoria jeopardises the potential success of future privatisations in Australia, as well as diminishing the attractiveness of Australia as a place to invest. One lesson from the Hambros analysis is that no regulator is an island and that poor regulation in one state will affect the national picture.

27 Mr Eiszele, Western Power Corporation, Committee Hansard, Perth, Friday, 19 November 1999, p 965-966.

Regional and rural Australia will be especially affected by the regimes. There are a variety of industries and businesses in the bush where the cost and reliability of energy supply is critical not only to their success but also to their survival. Obvious examples are mining, mineral and food processing, and a range of agricultural activities such as dairying.

Much of the electricity infrastructure in rural areas is antiquated and outmoded, a legacy we may say of past government policies and not private enterprises. But that infrastructure will not be expanded and updated with newly emerging technologies under a command and control regime, nor will many of the emerging new services that are increasingly becoming available which are 'hanging off' the poles and wires of businesses, and there will be no other form of dynamic efficiency.

These consequences will not be the result of any perverse or antagonistic attitude by distribution businesses, either privately or publicly owned; it is simply the inevitable outcome from the distortions and perverse incentives inherent in the regulatory regimes themselves. The distribution businesses of which we are aware are very keen to expand the networks and to improve the range and quality of services, but they will not do so if they fear not getting their money back.

There are many people in the bush who are on low incomes or who are low or negative savers. The regimes being implemented automatically provide for significant jumps in prices, which must inevitably occur at some unknown future time under the proposals. Such price shocks cannot be anticipated and, therefore, cannot be avoided by a change of consumption, nor is there any substitute for what is, after all, an essential service. The money would, therefore, have to come directly from savings or by higher debt. Clearly, sudden and substantial price changes to accommodate the accumulated changes that occur in industries over five years is not emulating what happens in any real world market, as required by national competition policy - no market acts like that.

These are strong views and we have hesitated before placing them before this committee. However, we are not alone in having such concerns. This is evident from the submissions that have been made to the various regulatory pricing reviews by consumers, user industries and businesses, and other interested parties. Nor are we isolated in our criticisms of the cost plus/rate of return regulation and the so-called building block approach which is being implemented. Indeed, we consider that we hold the policy high ground and the theoretical and empirical high grounds, and it is the regulators who are isolated.

Our submission refers to a number of regulators and regulatory economists of the highest order who have commented critically on the Australian regulatory regimes, including the former heads of major regulatory bodies overseas and, in Australia, the former head of the BIE, the Deputy Chairman of the TPC, and an Associate Commissioner of the ACCC.

Comments in a similar vein have been made about the type of regulation being adopted here by many other eminent experts, including Professor Beesley, the father of UK incentive regulation, and Professor Sandford Berg and Professor Baumol in the US. Only this week, two professors who have acted as advisers to regulators here have passed comment on the Australian approach as rate of return regulation. I might say that rate of return regulation is something that policy makers here attempted to specifically avoid, given its dismal record in the US.

Even one of the regulators, IPART in New South Wales, supported these points in a staff paper, coming down firmly in favour of first best regulation. Examples of that are total factor productivity regulation or glide path regulation. But this does not appear to have influenced what is being proposed or implemented. I will quote from the IPART staff paper - it is included in the submission, but I would like to repeat it here. It states:

*The history of intrusive cost plus regulation is replete with examples of heavily regulated utilities that exhibit low levels of efficiency, poor investment practices and below average service performance. Both theory and experience indicate that repeated, frequent confiscation of the benefits of efficiency improvements, combined with uncertainty over future regulatory actions, will lead to poor performance and welfare loss.*²⁸

6.50 Whilst the regulation of infrastructure services is outside of the Committee's terms of reference, to the extent that the administration of NCP and the implementation of that policy crosses this field, then the Committee is concerned about co-ordination and the effectiveness of the policy.

Recommendation

33. *That issues relating to the regulation of infrastructure services are of serious concern and should be a matter for priority discussion by CoAG.*

The speed and extent of change

6.51 Evidence was presented that rural Australia is suffering "reform syndrome". Mr Luetton, of the Queensland dairy industry queried the rate of change and the dairy industry's capacity to quickly assimilate change:²⁹

..... Our industry has been in a quite significant process of change for a number of years now, and we need to manage that change. The NCC

28 Mr Lee, United Energy Ltd, Committee Hansard, Melbourne, Friday, 16 July 1999, p535-536.

29 Mr B McCallum, Director, Economic Performance Division, Committee Hansard, 7 April 1999, p.222.

does not seem to give recognition of the need to manage change. It is change for change sake, and overnight almost, and as an industry we need to make sure we have time to adjust. Many of our people will crash, and we believe that next year could be quite a significant year for us. That is an issue aside.

6.52 The issue is not confined to any one industry. Professor Brownlea informed the Committee of the results of research he is undertaking in Queensland:

The first one is that competition is not new. But, from our fieldwork this time, it seems to be different. There are five or six dimensions of how that competition is being experienced a little differently in the bush, as we have seen it. They include its intensity, the sense of control over the change process, apparent trade-offs that seem to be taking place within that process, a feeling of policy isolation, false expectations and uncertainty and insecurity. The communities combine all of those dimensions as a sense of unfairness about the way things are happening.³⁰

6.53 Further, Professor Brownlea expressed the view that:

I do not think you can avoid becoming increasingly competitive in today's global world. I think we need policies that support that. They need to be marketed in an appropriate way. They need to be evaluated, because this is a learning experience but is not treated as such.³¹

6.54 Others expressed the view that it is necessary to slow down if only to allow a better assessment of proposals under NCP. Mr Wren of the Western Australia Water Users Coalition advised the Committee of the groups concerns:

This is the concern of our group: we are asking, 'What is the implication of this?' because they are a part of the NCP. We have asked the state government to back off, but they said they cannot because of CoAG. Then we talked to the Productivity Commission, and they said, 'There is no rush - you have until 2001.' Here we are saying, 'Don't rush,' but they are rushing ahead; they want to rush it through. It is not tidy; there are a lot of loose ends. There are loose ends on capital gains; there are loose ends on native title; and there are

30 Professor A A Brownlea, Chair, Strategic Liaison Committee, Queensland Departments of Transport and Main Roads, Committee Hansard, 7 April 1999, p 153.

31 Professor A A Brownlea, Chair, Strategic Liaison Committee, Queensland Departments of Transport and Main Roads, Committee Hansard, 7 April 1999, p 165.

loose ends on how the minister is going to handle what is now currently in the hands of private property and local government.³²

6.55 The Committee was repeatedly told by the NCC, the Productivity Commission and others, that stopping or slowing the rate of change is not seen as being in the best interests of those undergoing the change or the country as a whole. This is because much of the change is being driven by offshore events and Australia itself cannot stand-alone from the international community.

Although a halt to NCP is not warranted, the Commission recognises that NCP is to be reviewed by the relevant parties - the Council of Australian Governments (CoAG) - as early as next year....

And in relation to the reform schedule:

..arrangements extending beyond 2000 can be accommodated within the agreed framework, provided that they can be shown to be in the 'public interest'...

and

The intergovernmental agreements on electricity, gas, water and road transport incorporated in NCP contain sets of principles rather than immutable action plans tied to rigid implementation schedules....³³

6.56 The Commission goes on to conclude that:

Control of NCP rests with governments which have used forums and processes to consider and, where necessary, modify NCP implementation schedules. The evidence suggests that these processes are working....

At this juncture, there should be no across-the-board extension of the National Competition Policy target dates.³⁴

6.57 Whilst the Senate Select Committee agrees with the Commission that NCP should not be halted, it strongly disagrees with the conclusion that current administrative mechanisms are effective and has recommended changes to administrative structures to ensure greater oversight of the management of the policy. The issues of the extension of timeframes should be considered by CoAG.

32 Mr D Wren, Secretary/Treasurer, Western Australia Water Users Coalition, Hansard, 17 May 1999, p 421.

33 Productivity Commission, Impact of Competition Policy and Reforms on Rural and Regional Australia; Inquiry Report No 8, 8 September 1999, p 333-334.

34 Productivity Commission, Impact of Competition Policy and Reforms on Rural and Regional Australia; Inquiry Report No 8, 8 September 1999, p 335.

Recommendation

34. *That there be a review of NCP by CoAG to ensure that its economic and social objectives are being met, and that the policy be subject to ongoing monitoring by CoAG.*

Senator John Quirke
Chairman

ADDENDUM TO REPORT

SENATOR BOB BROWN, AUSTRALIAN GREENS

National Competition Policy (NCP) is seen by many to be an institutionalised cash-cow for large corporations at the expense of small business, the community (especially in the less profitable rural and regional areas), and the environment.

For example –

- Despite the legislation having been ‘reviewed’ under NCP, native forest wood remains systematically under-priced and directly subsidised, at the expense of both the environment and the competing plantation-based industry.
- Treating road and rail freight separately – rather than land transport overall -- is absurd. Yet that is the NCP approach. As a result, rail has been left at an even greater disadvantage relative to road (soon to be compounded by the GST impact), and the opportunity lost to improve health, urban amenity and the environment by getting more freight onto trains.
- The time and money spent preparing expressions of interest or tenders to supply social services discriminates against small local community groups, inhibits co-operation and can lead to more impersonal and less responsive care.

It is heartening that the Committee’s report recognises some of the problems, but they will not be addressed simply by broadening the public interest test, adjusting the implementation procedures, or ‘educating’ the public.

The National Competition Policy legislation and agreements need to be revisited. Local government must be involved and the process as a whole open and rigorous.

Recommendations

1. That CoAG commission an independent assessment of the extent to which consumers in different parts of Australia have actually benefited from NCP and related reforms, not only in relation to prices, but also factors such as choice, availability, service standards and convenience.
2. That CoAG commission an independent assessment of the social and environmental impacts of NCP.
3. That local government participate in the CoAG 2000 review of NCP; and that local government be invited to recommend an appropriate form of representation.

4. That the CoAG 2000 review should:

- ❑ assess the need to revise the agreements and legislation under which NCP operates;
- ❑ ensure that social and environmental goals are not compromised by NCP;
- ❑ address the need to compensate or otherwise ameliorate the impact on people who have been made worse-off by NCP and associated economic rationalist policies;
- ❑ guarantee that processes are transparent and accountable.

Senator Bob Brown

APPENDIX 1

LIST OF SUBMISSIONS

1	Holroyd City Council	NSW
2	Mr K.G. Goodman	WA
2A	Mr K. G. Goodman	
2B	Mr K. G. Goodman	
2C	Mr K. G. Goodman	
3	Nexus Australia	QLD
4	Mr Geoff Taylor	WA
5	Mr Robert Hewett	SA
6	Mr Greg Hoy	VIC
7	Australian Finance Conference	NSW
8	National Association of Retail Grocers of Australia	NSW
8A	National Association of Retail Grocers of Australia	NSW

9	Mr David McDonald	WA
10	Mr Robert Draper	NSW
11	Brandon Engineering Hyne	QLD
12	Mr C.D. Young	QLD
13	Mr Hugh Kingsley	VIC
14	Mr Ian Westoby	WA
15	Mr Neil Weller	QLD
16	Ms Carol O'Donnell	NSW
16A	Ms Carol O'Donnell	NSW
17	Shire of Jerramungup	WA
18	Mrs S Edwards	WA
19	The Brands Coalition	VIC
20	Southern Region Women in Dairying Group	NSW
21	Shire of Serpentine-Jarrahdale	WA

22	Australian Cane Farmers Association (ACFA)	QLD
23	National Civic Council	VIC
24	Shire of Carnamah	WA
25	Professor Philip Laird	NSW
25A	Professor Philip Laird	
26	Ms Fay Conroy	NSW
27	Institute of Public Affairs Ltd	VIC
28	Ms Vera Raymer	QLD
29	Remote & Isolated Pharmacists Association Australia Inc	ACT
30	Ms Astrid Herlihy	WA
31	Mr Timothy Fisher	QLD
31A	Mr Timothy Fisher	
32	M/- Pat Kerlin	QLD
33	REAMP ACT Inc	ACT

34	BEST Publicity & Liaison Volunteer	ACT
34A	BEST Publicity & Liaison Volunteer	ACT
35	Murrumbidgee Irrigation	NSW
35A	Murrumbidgee Irrigation	NSW
36*	Mr Ian P Boileau	QLD
37	Ms S. G. Greentree	QLD
38	Mr Arthur Watson	QLD
39	People Together Project	VIC
40	Mr & Mrs Williams	QLD
41	Caloundra Community Centre Inc.	QLD
42	Freedom From Violence Australia Inc.	ACT
43	Mr J.W.Liesker	SA
44	The Western Australian Broiler Growers Association Inc.	WA

45	Mr N.A Birch	QLD
46	Insurance Council of Australia Ltd	NSW
47	Mr Dennis Clarke	NSW
48	Youth Coalition of the ACT	ACT
49	Australian Dental Association Inc	NSW
50	Australian Labor Party	NSW
51	Queensland Dairyfarmers' Organisation	QLD
52	Mr K.R. Collyer	VIC
52A	Mr K.R. Collyer	VIC
53	Mr Jock Douglas AO	QLD
54	National Tertiary Education Industry Union (NTEU)	VIC
55	Hastings River Water users' Association	NSW
56	Dorset Council	TAS
57	The City of Newcastle	NSW

58	Queensland Nurses' Union	QLD
59	Palumbo Holdings Pty Ltd	WA
59A	Palumbo Holdings Pty Ltd	WA
60	Walcha Council	NSW
61	Tenants' Union of Queensland	QLD
62	The Association of Independent Retirees Inc. Cairns-Mulgrave Branch	QLD
63	Good Shepherd	VIC
64	District Council of Grant	SA
65	Mrs. M Lawler	QLD
66	Bombala Council	NSW
67	Australian Doctors' Fund	NSW
68	Queensland Farmers' Federation	QLD
69	Australian Council of Professions Ltd	ACT

70	Ms Lyndsay Brooker	NSW
71	Macarthur Community Care Forum	NSW
72	Perry Shire Council	QLD
73	Mr Michael Bryan	QLD
74	Medical & Surgical Referral Directory	WA
75	Sunshine Coast Community Services Council Inc	QLD
76	The Royal Australian Institute of Architects	ACT
77	Earth Sanctuaries Ltd	SA
78*	Grains Council of Australia	ACT
79	Cootamundra Shire Council	NSW
80	Ms Carr & Smethurst	QLD
80A	Ms Jan Carr and Lillian Smethurst	QLD
81	Dr Alan Williams	QLD
82	The Western Australian Farmers Federation (Inc)	WA

83	Rural Doctors Association of Australia Ltd	WA
84	Dr Phil Toner	NSW
85	Progressive Labour Party	NSW
86	Potato Growers Association of WA	WA
87	Australian Education Union	VIC
88	Australian Conservation Foundation	VIC
88A	Aust. Conservation Foundation	
89	A Group of Concerned Dairy Women	QLD
90	Chicken Meat Group	VIC
91	Professor John Quiggin	QLD
92	Howie & Maher	VIC
93	Mrs June Ayres	SA
94	Mid North Coast Regional Council for Social Development	NSW

95	United Firefighters Union of Australia	SA
96	Co-operative Federation of Victoria Ltd	VIC
97	Canegrowers	QLD
98	Coles Supermarkets	VIC
98A	Coles Supermarkets	VIC
99	NSW Minerals Council Ltd	NSW
100	Social Action Office	QLD
101	Australian Capital Territory Toalisator Agency Board (ACTTAB)	ACT
102	Australian Justice For All	QLD
103	Australian Dental Prosthetists & Dental Technicians Society	NSW
104	Richard Sanders	QLD
105	Mr Stewart MacDonald	NSW

106	Economic Reform Australia (SA Division) & The Conservation Council of SA	SA
107	Dr Christopher Clay	WA
108	Mr Ian Battle	NSW
109	Wauchope Branch, Dairy Farmers Association	NSW
110	Cullen & Couper Pty Ltd	QLD
111	Medical Defence Conspiracy (MDC)	NSW
112	Mr Hal Pritchard	SA
113	Riverina Eastern Regional Organisation of Councils	NSW
114	Mr Peter S MacPhillamy	NSW
115	Australian Physiotherapy Association	VIC
116	Peagrowers Co-operative Ltd	VIC
117	South Sydney Community Transport	NSW
118	Australian Chicken Growers' Council Ltd	NSW

119	Mr & Mrs A.N Campbell	NSW
120	Mr G.L. Smith	QLD
121	South Australia Community Health Research Unit	SA
122	Redfern Legal Centre	NSW
123	Premier of Victoria	VIC
124	Australian Grain Industry Taskforce	VIC
125	ACT Churches Council	ACT
126	Community Development Office	QLD
127	Tasmanian Chicken Growers	TAS
128	Mid NorthCoast Regional Neighbourhood Forum	NSW
129	Australian Association of Surgeons	NSW
130	Victorian National Parks Association Inc.	VIC
131	State Chamber of Commerce	NSW

132	The New South Wales Council of Professions	NSW
133	CoachTrans Australia	QLD
134	Western Australian Water Users Coalition	WA
134A	Western Australian Water Users Coalition (Inc)	WA
134B	Western Australian Water Users Coalition (Inc).	WA
135	Riverina Regional Development Board	NSW
136	Western Australian Municipal Association	WA
137	Community Futures Network	QLD
138	The Institution of Engineers, Australia	ACT
139	QLD Chicken Growers Association Inc	QLD
140	Australian Association of Surgeons	NSW
141	Australian Council of Building Design Professions Ltd	VIC
142	QLD Department of Transport & Main Roads, Strategic Liaison Committee	QLD
143	Australian Medical Association (AMA)	ACT

144	CONFIDENTIAL	
145	National Competition Council	VIC
145A	National Competition Council	VIC
146	NSW Dairy Farmers Association, Wagga Wagga & Tumut Branches	NSW
147	Motor Trades Association of Australia	ACT
147A	Motor Trades Association of Australia	ACT
148	Shire of York	WA
149	M/- W.A. Edwards	QLD
150	Municipal Association of Victoria	VIC
151	M/- N. Taylor	NSW
152	Conservation Council of the South-East Region	ACT
153	Shire of Kondinin	WA
154	Australian Association of Social Workers	ACT

155	Consumer Law Centre VIC	VIC
155A	Consumer Law Centre of Victoria Limited	VIC
156	Australian Plaintiff Lawyers Association	NSW
157	Public Sector Research Centre, UNSW	NSW
157A	Public Sector Research Centre	NSW
158	Townsville City Council	QLD
159	Shire of Dandaragan	WA
160	Public Interest Advocacy Centre	NSW
160A	Public Interest Advocacy Centre	NSW
161	QLD Produce, Seed & Grain Merchants' Association	QLD
162	The Treasury	ACT
163	Australian Services Union	VIC
164	Federation of Community Legal Centres (Vic) Inc	VIC
165	WA Government	WA

166	Brotherhood of St Laurence	VIC
167	Royal Australian Planning Institute	VIC
168	Australian Catholic Social Welfare Commission	ACT
169	Australian Medical Council Incorporated	ACT
170	National Trust	ACT
171	New South Wales Teachers Federation	NSW
172	Council of Australian Postgraduate Associations Incorporated	VIC
173	The Concerned Farmers Group	QLD
174	Australian Competition and Consumer Commission	ACT
175	National Farmers Federation	ACT
176	Queensland Dairy Farmers Organisation & The Dairy Farmers Association of NSW	QLD
177	Ms De-Anne Kelly, M.P	QLD

178	Rail Tram and Bus Industry Union	NSW
179	Animal Liberation Act	ACT
180	Animals Australia	VIC
181	NSW Young Lawyers	NSW
181A	NSW Young Lawyers	NSW
182	The Newsagents Association of South Australia Ltd	SA
183	Family Planning Western Australia	WA
184	Dr. Chris Sotiropoulos	VIC
185	The Pharmacy Guild of Australia	ACT
186	Buoyant Economies	NSW
187	Maroochy Shire Council	QLD
188	Great Southern Area Consultative Committee	WA
189	Upper Murrumbidgee Catchment Coordinating Committee	ACT

190	Department of Agriculture, Fisheries and Forestry - Australia	ACT
191	Australian Chamber of Commerce and Industry	ACT
192	Rural Committee Liberal Party of Australia WA Division	WA
193	Australian Council for Infrastructure Development Limited	NSW
194	United Energy	VIC
195	Council for the National Interest	WA
196	WA Dairy Industry	WA
197	Committee of Presidents of Medical Colleges	VIC
198	Balanced State Development Working Group	ACT
199	Department of Premier and Cabinet	TAS
200	Transport and Regional Services	ACT

201	Goldfields Esperance Development Commission	WA
202	Queensland Rural Women's Network Inc.	QLD
203	Environment Australia	ACT
204	Kalgoorlie-Boulder Chamber of Commerce	WA
205	Ad-A-Cab Australia Ltd	
	Freehill Hollingdale & Page	QLD
206	Cabonne Council	NSW
207	ACT Government	ACT
208	Australian Greenhouse Office	ACT
209	Norma Flint & Morgan Graham	ACT
210	Normandy Mining Limited	WA
211	South Australian Government	SA
212	ACT Taxi Drivers Association	ACT
213	City of Port Lincoln	SA

214	City of Bunbury	WA
215	Nambucca Shire Council	NSW
216	Copmanhurst Shire Council	NSW
217	Aboriginal and Torres Strait Islander Commission	ACT
218	Royal Australasian College of Surgeons	VIC
219	Anglicare Australia	VIC
219A	Anglicare Australia	VIC
220	Water Corporation	WA
221	Mr Frank Harman of Murdoch University	WA
222	Wollongong Youth Accommodation and Support Association	NSW
223	Weddin Shire Council	NSW
224	Department of Treasury Western Australian Government	WA

225	Queensland Government	QLD
225A	Queensland Government	QLD

APPENDIX 2

LIST OF WITNESSES AT PUBLIC HEARINGS

Canberra, 26 March 1999

Mr Christopher Mark Bell, Policy Manager, Finance and Microeconomic Reform, Australian Local Government Association

Ms Deborah Cope, Deputy Executive Director, National Competition Council

Mr Neil Fisher, Executive Director, Grains Council of Australia

Mr Peter Greagg, Manager, Market Structure Unit, Structural Reform Division, The Treasury

Mr Donald Hunter, Executive Director, Australian Council of Professions

Mr Erich Janssen, Acting Secretary General, Australian Medical Association

Ms Nicole Masters, Acting General Manager, Structural Reform Division, The Treasury

Mr Adam McKissack, Manager, Communications and Energy Markets Unit, Structural Reform Division, The Treasury

Mr Gary Potts, Executive Director, Market Groups, The Treasury

Mr Graeme Samuel, President, National Competition Council

Canberra, 30 March 1999

Mr Fred Argy, Visiting Fellow, Public Policy, Australian National University

Mr Ross Jones, Economic Consultant, Australian Competition and Consumer Commission

Mr Hank Spier, General Manager, Australian Competition and Consumer Commission

Brisbane, 7 April 1999

Mr John Bradley, Ministerial Policy Adviser, Office of Treasurer, Queensland Government

Professor Arthur Brownlea, AM, Chairman, Strategic Liaison Committee, Queensland Departments of Transport and Main Roads

Miss Jacqueline Gittins, Research Officer, Strategic Liaison Committee, Queensland Departments of Transport and Main Roads

Mr Ralph Leutton, Chief Executive Officer, Queensland Dairyfarmers Organisation & New South Wales Dairy Farmers Association

Mr Bruce McCallum, Director, Performance Division, Queensland Treasury

Ms Beth Mohle, Project Officer, Queensland Nurses Union

Mr Anthony Parsons OAM, Executive Officer, Queensland Produce, Seed and Grain Merchants Association Inc

Ms Louise Peach, Chairperson, Sunshine Coast Community Services Council Inc and Community Developer/Manager, Caloundra Community Centre Inc

Professor John Quiggin

Ms Amanda Richards, Occupational Health and Safety Officer, Queensland Nurses Union

Ms Catherine Taylor, Director, Economic Policy and Projects, Policy Coordination Division, Department of Premier and Cabinet, Queensland Government

Mr Rodney Wolski, Member, Management Committee, Queensland Produce, Seed and Grain Merchants Association Inc

Brisbane, 8 April 1999

Mr Peter Borrows, Works Manager, Ipswich City Council

Mrs Jean Bray, Mayor, Esk Shire Council

Mr Graham Laurence, Executive Director, Queensland Farmers Federation

Mr Brett de Chastel, Acting Chief Executive Officer, Ipswich City Council

Mr Harry Gauvin, Finance Manager, Esk Shire Council

Mr Charles Hamilton, Executive Officer, Queensland Chicken Growers Association

Ms Sue Mihovilovich, Manager, Economic and Public Policy, Local Government Association of Queensland

Mr Danny Mullins, Chief Executive Officer, Esk Shire Council

Mr Ian Robinson, Economist and Research Officer, Queensland Farmers Federation

Mr David Spearritt, Finance Manager, Ipswich City Council

Perth, 17 May 1999

Mr Lennard Brajkovich, President, Western Australian Broiler Growers Association

Mr Murray Brown, Chief Executive Officer, Shire of Jerramungup

Mr Thomas Carstairs, Executive Officer, Potato Growers Association of WA

Mr Paul Carter, Economics Executive Officer, Western Australian Farmers Federation

Dr Christopher Clay, Fellow of the Australasian College of Dermatologists

Ms Nicola Cusworth, Chief Economist, Chamber of Commerce and Industry of WA

Mr Robert Da Prato, President, Poultry Farmers Association of Western Australia

Miss Shaheen De Souza, Policy Manager Finance and Taxation, Western Australia Municipal Association

Mr Colin Mann, Executive Officer, Poultry Farmers Association of Western Australia

Mr Gary Mannion, Project Leader, Regional Development Division, Department of Commerce and Trade

Mr John Martin, Director Strategy, Western Australian Municipal Association

Mr Ian Mickel, Vice-President, Western Australia Municipal Association

Mr Stuart Morgan, Chairman, WA Government/Regional Development Council,

Mr Terry Packard, Vice President, Western Australian Broiler Growers Association

Mr Domenick Palumbo, Palumbo Holdings Pty Ltd

Mr Lyndon Rowe, Chief Executive, Chamber of Commerce and Industry of WA

Mr Gregory Weller, Chairman, Rural Committee of the Liberal Party of Western Australia

Mr David Wren, Secretary/Treasurer, Western Australia Water Users Coalition

Perth, 18 May 1999

Mr Paul Ausburn, Board Member, Pilbara Development Commission

Mr Colin Bosustow,

Mr Franco Camarri, Senior Vice-President, Dairy Section, WA Farmers Federation

Mr Eliot Fisher, Chief Executive Officer, Shire of York

Mr Arthur Green,

Mr Dennis Martin, Projects and Infrastructure, Pilbara Development Commission

Ms Anne Sinclair, Principal Policy Officer, Pilbara Development Commission

Albany, 18 May 1999

Dr David Mildenhall, Rural Doctors Association of Australia Ltd

Mr Graeme Waugh, Western Australian Water Users Coalition

Mayor Alison Goode, Mayor, City of Albany

Mr Jim Kelly, Chief Executive Officer, City of Albany

Mr Pell House, Chairman, Great Southern Area Consultative Committee

Mr Ian Wilson, Deputy Chair, Great Southern Area Consultative Committee&, Executive Director, Albany Chamber of Commerce and Industry

Mr John Beaton, Project Manager, Geo Task (Australia)

Ms Annette McGready, Member, Great Southern Area Consultative Committee

Mr Robert Stockdale, Director, Regional Training Services, Partner Skill Hire

Mr Duane Schouten, Senior Development Officer, Great Southern Development Commission

Melbourne, 16 July 1999

Mr Christopher Clark, Contracts Officer, Greater Shepparton City Council

Mr Paul Fearon, General Manager, Regulation and Strategy, CitiPower Pty Ltd

Mr Christopher Field, Executive Director, Consumer Law Centre, Melbourne Victoria

Mr Timothy Fisher, Natural Resources Campaign Coordinator, Australian Conservation Foundation

Mr John Francis, Director, Finance and Corporate Services, Greater Shepparton City Council

Mr Hugh Gleeson, General Manager, Planning and Regulation, United Energy Ltd

Ms Deborah Hollingworth, Senior Legal Policy Adviser, Municipal Association of Victoria

Mr Timothy Lee, Assistant National Secretary, Australian Services Union

Mr Trevor Lee, Economic and Regulatory Adviser, United Energy Ltd

Mrs Catriona Lowe, Legal Policy officer, Consumer Law Centre, Melbourne, Victoria

Mr Donald Siemon, Social Policy Coordinator, Brotherhood of St Laurence

Mr Robert Spence, CEO, Municipal Association of Victoria

Mr Andrew Stephens, Executive Officer, Economic Development, Latrobe Shire Council

Adelaide, 2 August 1999

Mr Paul Caica, National Secretary, United Firefighters Union of Australia

Ms Gweneth Jolley, Senior Research Officer, South Australian Community Health Research Unit

Mr Russell Peate, Chief Executive Officer, District Council of Grant

Mr Donald Pegler, Chairman, District Council of Grant

Mr Christopher Rankin, Executive Officer, Newsagents Association of South Australia

Dr John Wamsley, Managing Director, Earth Sanctuaries Ltd.

Kalgoorlie, 17 August 1999

Mr Ernest Bridge, President, Watering Australia Foundation

Mr Andrew Caulton, Executive Committee Member, Kalgoorlie-Boulder Chamber of Commerce and Industry Inc.

Mr Douglas Daws, Chairman, Goldfields Utilities Ltd.

Mr Hugh Gallagher, Chief Executive Director, Kalgoorlie-Boulder Chamber of Commerce and Industry Inc.

Mr Douglas Krepp

Ms Annemarie McAuliffe, Member of Executive, Kalgoorlie-Boulder Chamber of Commerce and Industry

Mr Kerry McAuliffe

Mr Edwin Piper, Director, Corporate Services, City of Kalgoorlie-Boulder

Mr Colin Purcell, Acting Chief Executive Officer, Goldfields Esperance Development Commission

Mr Richard Scanlan, Chairman, Eastern Regional Council, Chamber of Minerals and Energy

Mr Graham Thomson, Project Director, Goldfields Utilities Ltd.

Mr Ziggy Wilk, Executive Member, Kalgoorlie-Boulder Chamber of Commerce and Industry Inc.

Sydney, 9 September 1999

Mr Graeme Brazenor, Federal President, Australian Association of Surgeons

Mr Kenn Clacher, Coordinator, Hunter Rail Access Task Force, New South Wales Minerals Council

Mr Phillip Frost, Director, Policy, Australian Council for Infrastructure Development

Professor Ralph Hall, Director, Public Sector Research Centre, University of New South Wales

Mr Murray Kidnie, Secretary, Local Government and Shires Association of New South Wales

Professor Phillip Laird

Dr Craig Lilienthal, President, New South Wales Council of Professions

Ms Linda Margrie, Macarthur Home and Community Care Development Worker, Macarthur Community Care Forum

Mr Shaun McBride, Policy Officer, Local Government and Shires Association of New South Wales

Mr Dennis O'Neill, Chief Executive Officer, Australian Council for Infrastructure Development

Mr Denis Porter, Executive Director, New South Wales Minerals Council

Mr Stephen Rix, Principal Policy Officer (Resigned), Public Interest Advocacy Centre

Ms Raileen Small, Researcher and Policy Analyst, Public Sector Research Centre, University of New South Wales

Mr Theophilus Taylor, Treasurer, Australian Association of Surgeons

Melbourne, 1 November 1999

Mr Ross Campbell, Director, National Competition Council

Mr Simon Cohen, Project Manager, National Competition Council

Mr Robert Davis, Director, Trade and International Affairs, Australian Chamber of Commerce and Industry

Professor Allan Fels, Chairman, Australian Competition and Consumer Commission

Mr Timothy Fisher, Land and Water Coordinator, Australian Conservation Foundation

Mr Michael Fitzpatrick, Director, Australian Council for Infrastructure Development

Mr Philip Frost, Director, Policy, Australian Council for Infrastructure Development

Ms Michelle Groves, Director, National Competition Council

Mr Ross Jones, Commissioner, Australian Competition and Consumer Commission

Mr Robert Kerr, Head of Office, Productivity Commission

Associate Professor Jennifer McKay, Water Law and Policy Group, University of South Australia

Mr Rodney Nettle, Chief Executive Officer, Australian Local Government Association

Mr Brendan O'Connor, Assistant National Secretary, Australian Services Union

Professor Robert Officer, University of Melbourne

Mr Herbert Plunkett, Assistant Commissioner, Productivity Commission

Mr Todd Ritchie, Director, Economic Policy, National Farmers Federation

Mr Russell Rollason, Anglicare Australia

Mr Graeme Samuel, President, National Competition Council

Mr Donald Siemon, Australian Council of Social Service

Mr Hank Spier, Chief Executive Officer, Australian Competition and Consumer Commission

Miss Margaret Starrs

Mr Peter Taylor, National Policy Manager, Aboriginal and Torres Strait Islander Commission

Ms Judith Tyers, General Manager, Business Council of Australia

Mr Michael Waller

Mr Edward Willett, Executive Director, National Competition Council

Perth, 19 November 1999

Mr David Eiszele, Managing Director, Western Power Corporation

Dr James Gill, Managing Director, Water Corporation

Dr Frank Harman, Senior Lecturer, Economics, Murdoch University

Ms Diane Margetts

Mr Nenad Ninkov, General Manager, Corporate Strategy, Western Power Corporation

Mr Lloyd Werner, Manager, Pricing and Agreements, Water Corporation

Mr Peter Williams, General Manager, Commercial, Water Corporation

APPENDIX 3

CULTIVATING COMPETITION

Inquiry into aspects of the National Competition Policy Reform Package

Report from the House of Representatives Standing Committee on Financial Institutions and Public Administration – June 1997

LIST OF RECOMMENDATIONS

Public interest test

- 1 The Committee recommends the following as necessary components of the ‘public interest’ process:
 - a) Responsibility for commissioning reviews (ie terms of reference, nature of the review and reviewers) should be taken at Ministerial level;
 - b) The nature of the review should be determined taking into account the significance, importance, diversity and sensitivity of the issue to be considered;
 - c) Clear terms of reference should be developed for the review including identification of the factors, whether in the list of factors set out in subclause 1 (3) or otherwise, that the decision maker believes is relevant. Terms of reference should be agreed by the relevant Minister;
 - d) The process and its timing should be as transparent as possible;
 - e) A plan of the review should be developed including details of the nature of the review to be used, resources and funding, and specify key dates (start, end, advertisement, call for submissions, closing date for submissions, reporting);
 - f) Consideration should be given to variations of the process for example joint review, national review, etc;
 - g) Methodology used for weighing up the benefits and costs should take account of both quantitative and qualitative data;
 - h) The review should consider the overall, wider consequences and impacts of the decision;
 - i) Level of consultation may vary with the significance, diversity and sensitivity of the review. Consultation should involve key stakeholder groups;
 - j) Where possible reviewers should be independent of the existing arrangements with more significant, more major and more sensitive reviews demanding greater independence;

- k) Where reviews are undertaken by persons closely involved in the activity in question, there should be provision for a review or reconsideration of the initial conclusion by some person or body independent of the relevant activity;
- l) Results of reviews and relevant key stages in the review process shall be publicly available;
- m) Where a matter is reconsidered at a later date, similar processes to those that applied to the initial consideration should be followed; and
- n) The Parties should coordinate their efforts to achieve a common set of basic principles to apply the 'public interest test' as outlined in (a) to (m) above.

The Committee recommends all jurisdictions should publish guidelines encompassing the application of the 'public interest test'. (paragraph 2.76)

Community service obligations

- 2 The Committee recommends that all CSOs be explicitly defined and their details made publicly available. (paragraph 3.41)
- 3 The Committee recommends that the Council of Australian Governments address ways of better coordinating the provision of community service obligations and welfare payments to safeguard the equitable distribution of payments and benefits for all recipients. (paragraph 3.47)
- 4 The Committee recommends that the funding arrangements for both existing and new community service obligations be transparent and assessed on a case-by-case basis. (paragraph 3.74)
- 5 The Committee recommends that any decision by a party to contract out the provision of community service obligations is most appropriately made on a case-by-case basis. Any contracting arrangement should contain clearly identified performance criteria and exit provisions. (paragraph 3.90)
- 6 The Committee recommends all governments:
 - a) Require their government business enterprises to include in their annual reports and corporate/business plans or other publicly available documents detailed information on the objectives, definition, costing, funding and contracting arrangements for community service obligations; and
 - b) Implement effective monitoring programs for community service obligations and ensure that those programs be outcome oriented. (paragraph 3.100)

Implications for the efficient delivery of services by local government

- 7 The Treasurer as a matter of priority address the issue of taxation of local government businesses at the next meeting of the Council of Australian Governments as under the current regime there is a powerful disincentive to corporatise. (paragraph 4.54)

- 8 The Committee recommends that State and Territory Governments encourage their local councils to more urgently implement appropriate accounting and financial management systems to assist resource allocation decisions, including those relating to community service obligations. (paragraph 4.63)

Related issues

- 9 The Committee recommends that following the completion of the current assessment round the Council of Australian Governments evaluate the dual role of the National Competition Council to determine if both roles are appropriate. (paragraph 5.12)
- 10 The Committee recommends the National Competition Council adopt a more open approach to its work and be more active in disseminating information about the activities of the Council and National Competition Policy. (paragraph 5.15)
- 11 The Committee recommends that the review of the need for and operation of the National Competition Council after it has been in existence for five years be an independent review and if the review determines the Council is to continue, a sunset clause on this matter be inserted into the Competition Principles Agreement. (paragraph 5.18)
- 12 The Committee recommends that the Treasurer ensure that:
 - a) The assessment for payment of both the Financial Assistance Grants and Competition Payments be performance based and reflect both the spirit and intent of the competition policy reform legislation and the inter-governmental agreements; and
 - b) Details of the assessment outcomes and process are made publicly available following each tranche's assessment. (paragraph 5.32)
- 13 The Committee recommends that the State, Territory and Commonwealth Governments put in place measurement and monitoring systems so that the outcomes of implementing national competition policy can be adequately assessed in the future. (paragraph 5.34)

The Committee recommends that all agencies involved in the implementation of national competition policy devote resources to ensure community understanding and debate about the contents of the policy and its outcomes. (paragraph 5.39)

APPENDIX 4

WESTERN AUSTRALIA, STANDING COMMITTEE ON UNIFORM LEGISLATION AND INTER-GOVERNMENTAL AGREEMENTS

Competition Policy, Consideration of the Implementation of a National Competition Policy

RECOMMENDATIONS

During the Standing Committee's considerations of issues relating to competition policy, concerns were raised relating to the fulfilment of community service obligations by, and the accountability of, utilities which have been corporatised or privatised.

Ministers responsible for the operation of utilities have in the past been able to intervene to ensure the maintenance of quality and service. Corporatisation and privatisation distance utility authorities from government. Such accountability mechanisms will disappear. It is considered essential that to determine the performance of such utilities the public requires access to information and a process of monitoring the performance of utilities.

The Standing Committee also notes that Parliament should have some input into the regulatory reform process to ensure that the benefits of public utility reforms are ultimately passed on to the public.

The services provided by utilities, for example, water, electricity and gas, are fundamental to the maintenance of basic standards of living. Corporatisation and privatisation of public utilities may need to include arrangements to encourage socially responsible decision-making by utility providers. This could include providing access to advisory services in cases of financial hardship and ensuring that connection, billing and repayment arrangements are socially sensitive.

The Standing Committee is of the view that these issues require further public debate and inquiry by the government when it prepares public utilities for restructure and corporatisation or privatisation.

Against this background, the Standing Committee recommends the following –

Costing Community Service Obligations

Recommendation One

1. (a) That the Parliament be informed of all community service obligations delivered by government business enterprises; and
(b) the associated costs of these community service obligations.
2. That government business enterprises identify and cost community service obligations delivered by them and report those findings in their Annual Reports in cases where this is currently not done.

Ombudsman**Recommendation Two**

That industry-specific Ombudsmen be established to investigate and resolve complaints involving a range of issues including quality of services, billing, disconnection of services provided by the specific utility.

Licensing Regime/Code of Conduct**Recommendation Three**

That participants in a public utility industry be required to be licensed or approved by an appropriate overseeing authority.

Quality standards should be part of the licence conditions. A breach of the licence conditions would occur through failure to comply with the standards.

Recommendation Four

That a Code of Conduct incorporating quality standards be developed by the relevant industry.

Adherence to the code would be a licence condition.

In the case of Recommendations Three and Four, breaches of licence conditions may require sanctions, such as penalties including monetary fines, rather than revocation of a licence as that may not be practical.

Legislation**Recommendation Five**

That where minimum standards are necessary, legislation should specifically set out appropriate benchmarks for electricity voltage, water quality, safety and other related matters. Such standards should be consistent across the industry

Contract**Recommendation Six**

That a supply contract between the supplier and the consumer contain standards relating to quality.

A breach of the standards would entitle the consumer to claim damages for any loss caused by the breach. However, in such a case contract negotiations can be very one-sided when consumers deal with large monopolistic utility businesses; safeguards, therefore need to be established.

Consumer Charter**Recommendation Seven**

That a consumer charter be developed between the regulator, the utility and

consumer representatives and incorporated into standard form contracts to ensure that unreasonable terms and conditions are not imposed.

Consumer charters may be an appropriate way to ensure service and conduct quality, particularly in relation to less technical aspects of quality.

They can be flexible and specifically tailored to a particular agency or industry, including specific quantifiable targets which can be monitored to assess performance of the organisation.

Implied Regulation Threat

Recommendation Eight

That as a last resort an implied threat of regulation should exist to ensure all businesses provide quality services to consumers.

Regulation Review

The Standing Committee agrees with the need for regulation review in line with the microeconomic reform agenda and notes that most other jurisdictions have in place a formalised and systematic process for that review. The Committee therefore recommends

Recommendation Nine

That a formalised system of regulatory review be established in Western Australia, which should report to the Parliament through the responsible Ministers and be referred to the appropriate Standing Committee for its response. (Refer to paragraphs 9.17 and 11.9).

Statutory Marketing Authorities

After considering the submissions received, the Standing Committee concluded it was necessary to bring to the Legislative Assembly of Western Australia's attention the concerns raised by a number of those submissions. In the agricultural sector submissions, serious doubts were raised about statutory marketing authorities. Statutory marketing arrangements were said to depend on anti-competitive practices and such practices would not conform to the wider public interest. Such arrangements, it was claimed, lead to unnecessary market inefficiency and costs and therefore limit economic growth in Western Australia and deter investment.

Some submissions claimed that statutory marketing authority mechanisms have tended to distort the market and market signals. Social objectives could be delivered more efficiently through alternative programs. The system of compulsory acquisition or vesting of crops, it was submitted, removed individuals' freedom of marketing choice and caused significant logistical inefficiency. Such authorities have limited accountability.'

As a result of such evidence the Standing Committee recommends -

Recommendation Ten

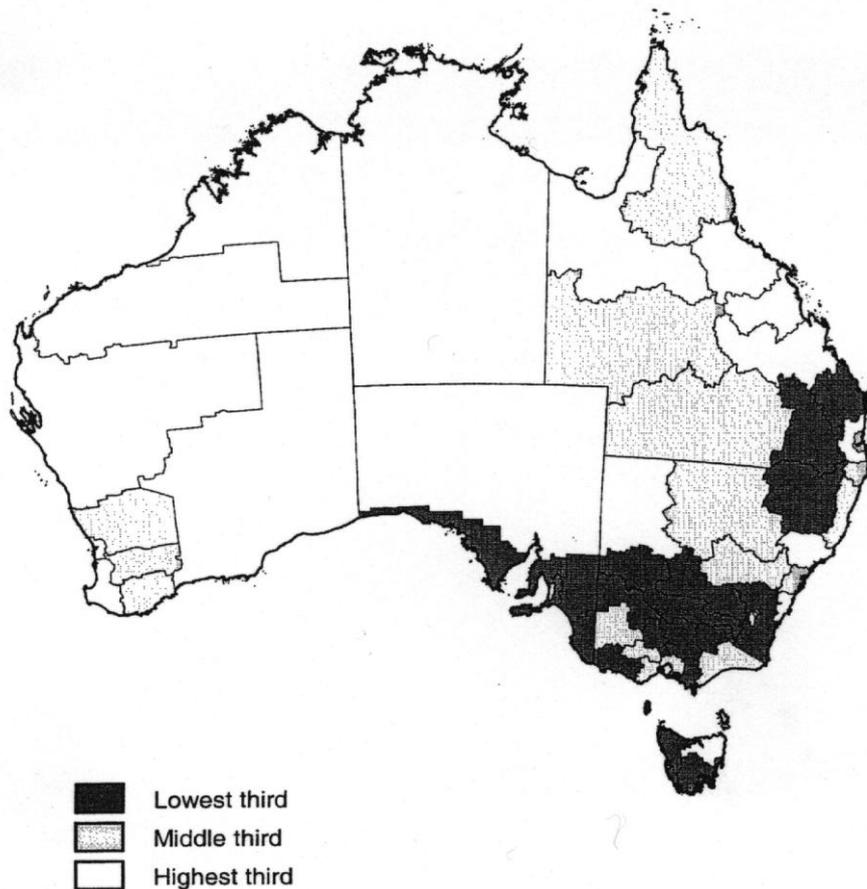
That, as a matter of priority, the Government continues its review of any anti-competitive effects of statutory marketing authorities.

Parliamentary Direction

That in accordance with Standing Order 378(c) of the Legislative Assembly of Western Australia, this Standing Committee directs that the responsible Ministers be required within not more than three months, or at the earliest opportunity after that time if Parliament is in adjournment or recess, to report to the House as to the action, if any, proposed to be taken by the Government with respect to the recommendations of this report.

APPENDIX 5

Estimated Employment Effects From NCP Reforms Over The Decade to



the Mid-1990's

Key

Source: Productivity Commission, Impact of Competition Policy Reforms on Rural and Regional Australia: Inquiry Report, (Productivity Commission: No. 8, 8 September 1999) p. 309.

APPENDIX 6

NATIONAL COMPETITION POLICY INQUIRY

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